PCCC Committee

From:	Timothy Prenzler <tprenzler@usc.edu.au>
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To:	PCCC Committee
Subject:	Submission to the Review of the Crime & Corruption Commission
Attachments:	Towards a model public sector integrity agency.pdf; Assessment of Reform in Post-Fitzgerald Queensland published version.pdf; Tim Prenzler Full CV.pdf; Chp 12 Prenzler Den Heyer Ideal Arrangements pre-print.pdf
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To:

Mr Peter Russo, MP

Acting Chair

Parliamentary Crime and Corruption Committee

Queensland Parliament

Dear Mr Russo

Thank you for your letter of 9 June 2015 inviting submissions to the current Review of the Crime and Corruption Commission (CCC).

The Review provides an unprecedented opportunity to undertake a major restructure of the CCC, following years of turmoil and politicisation.

In my view, the Commission's present structure and functions are inconsistent with democratic principles and with the science of government accountability and public sector integrity management. The current approach is overly elitist. Ordinary complainants and whistleblowers are treated dismissively, and the people of Queensland are badly let down. A major restructure is required to ensure optimal legitimacy and effectiveness.

The following points enlarge on this position:

1. In order to engender adequate confidence in the legitimacy of the public sector integrity system, the CCC needs to directly and independently investigate a much larger proportion of complaints. This would entail training and employing specialist 'civilian' investigators in place of seconded police. It would also entail creating a clearer hierarchy of matters, with more serious matters designated for automatic independent processing; and remaining, lower level matters, subject to negotiation with complainants about which agency investigates the matter.

2. There also needs to be a more efficient approach to investigations and adjudication. The CCC should prioritise an administrative and inquisitorial approach to matters, with criminal prosecutions only taken after administrative processes are complete. The Commission also needs to be able to direct or over-ride disciplinary decisions by government departments. This is essential to counter the tendency towards weak disciplinary responses when matters are dealt with in-house. There also needs to be a disciplinary matrix, on the public record, so citizens can see how offences align with sanctions.

3. At the same time, there needs to be a decisive shift towards the availability of an independent mediation option for complaints.

4. In order to take a much more substantive role in complaints management and engage in more effective public outreach, the CCC needs to regionalise its operations by setting up accessible offices in regional centres.

5. The task of combating major crime needs to be taken away from the Commission. This function distracts from the core task of public sector integrity management, and it generates a substantial corruption risk.

6. The overall focus of the CCC's work should be on preventing misconduct. To do this, it needs a large unit concerned with initiating prevention strategies and working cooperatively with stakeholders, and engaging in independent research and evaluation focused on integrity indicators.

To enlarge slightly, I would like to encourage the Committee to consider the models provided by the most successful police oversight agency in the world – the Police Ombudsman for Northern Ireland – and the most successful anti-corruption agency – the Hong Kong Independent Commission Against Corruption. An agency that combines both the anti-misconduct and anti-corruption functions of these two agencies would be best for Queensland. This means that both misconduct (for example, neglect of duty and excessive force) and classic corruption would be covered.

In support of these recommendations, I have attached three papers that set out the evidence base. These are:

1. Prenzler, T. (2015, in press). Managing police conduct: Finding the balance between internal and external processes. In T. Prenzler & G. den Heyer (Eds.), *Civilian oversight of police: Advancing accountability in law enforcement* (pp. 251-265). Boca Raton: CRC Press – Taylor & Francis.

2. Prenzler, T., & Faulkner, N. (2010). Towards a model public sector integrity commission. *Australian Jour of Public Administration, 69*(3), 251-262.

3. Prenzler, T. (2009). An Assessment of reform in politics, criminal justice and the police in post-Fitzger Queensland. *Griffith Law Review, 18*(3), 576-595.

Thank you for the opportunity to make this submission. I have also attached a copy of my CV, which sets out my work in this field and other publications that may be of interest to the committee.

Yours sincerely,

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Chapter 12

This final chapter brings together the various themes of the book by setting out the lessons for police complaints and discipline systems from available evidence. The focus is on the design of a model system for dealing with complaints, and also for optimising police conduct and accountability through enhanced responses to complaints. Three main themes are developed: (1) the importance of independence in investigations and adjudication, (2) the value of alternative dispute resolution, especially an independently managed mediation program, and (3) the importance of the whole system working in support of optimal ethical conduct by police, including the incorporation of a complainant profiling and early intervention system. Despite the emphasis on independent investigations and independent mediation, the model system proposed here leaves large scope for police responsibility for integrity management, including through a scientific approach to recruitment, training, supervision, remediation and proactive investigations.

Independence

Chapter 1 examined how police complaints and discipline systems, including civilian oversight systems, developed over time in response to corruption scandals, judicial inquiries and government reviews. The results showed how inquiries and reviews typically identified deficiencies in internal complaints investigations and discipline as key contributing factors to endemic misconduct and lack of public confidence in police. This malaise included inadequate responses to police whistleblowers. These inquiry and review findings then frequently led to in-principle support for independent processes. However, final recommendations tended to pull punches, reverting to a preference for primary police control of complaint responses. The rationale included the need for police to maintain responsibility for integrity and the supposed lack of investigative competency outside policing. In many cases, a reform package that continued to rely on police management of complaints contributed to further misconduct problems. More broadly, continuing reliance on in-house processes meant that persons making complaints (including police themselves) were denied an impartial hearing grounded in an institutional separation of the accused person from the investigating authority. Consequently, an intrinsic 'no win' situation was perpetuated through a straight out denial of natural justice. The view was summed up in an Australian Law Reform Commission report (1995, pp. 149-150):

> To ask the police to investigate complaints against their own places them in a 'hopeless conflict of interest position'. Police investigators, whether consciously or otherwise, will tend to be sceptical of complainants and will be 'softer' on the police concerned.

Chapter 2 showed how the idea of independence can be mapped across a spectrum: specifically the categories of (1) 'insiders' (mainly former police from the same force under scrutiny), (2) 'insider outsiders' (former officers from another force), (3) 'outsider insiders' (former investigators from allied regulatory agencies) and (4) 'outsiders' ('home grown' investigators from outside groups 1-3, trained in-house). There is likely to be a strong correlation between increased proportions of investigators in the direction of group four and increased evidence of impartiality and objectivity in the complaint investigation and resolution process. However, as evidenced by practitioner interviews in the chapter, while 'outsiders' might be considered ideal, there are significant benefits to be had from the inclusion of carefully selected investigators from groups two and three, in terms of knowledge, skills and commitment.

Chapter 3 reviewed public opinion surveys about preferred police complaints and discipline systems. Public opinion appears to strongly support the independent processing of complaints. Some surveys show extremely high levels of support above 90%. General support for the principle of independence is, however, tempered by the results for specific questions about how different types of complaints should be handled. Surveys with breakdown questions show that support for independence is centred on serious matters, with varying degrees of support for police management of lower level complaints. Many of these surveys do not directly canvas the reasons for these views. Available data suggest that distrust or negative attitudes towards police have some influence in turning people away from in-house processes to support external agencies. At the same time, the main reason appears to relate more to the general principle that investigations and adjudication not only need to appear to be independent but should be genuinely independent through a clear functional separation between the investigator and the subject officer. In Northern Ireland, with the world's most independent oversight agency, public opinion rates have shown extremely high levels of confidence – 85% on average across the sectarian divide – in the independence of the Ombudsman from the police, its fairness and impartiality, and contribution to the quality of police work (PONI, 2010).

Chapter 4 examined surveys of complainants who had been through a complaints and discipline system. The results showed that the large majority of complainants – typically 70% – were dissatisfied with outcomes and processes in police-dominated systems. Mixed systems produced similarly high levels of dissatisfaction, with the exception of one Philippines study. In some cases, dissatisfaction overall related to dissatisfaction with outcomes – i.e., complainants with unsubstantiated complaints tended to be more dissatisfied overall. There was also widespread dissatisfaction with process aspects – such as timeliness, communication, and the commitment and interest of the investigating officer – which could apply regardless of which agency carried out the investigation. At the same time, distrust of police investigating police was a common theme. Complainants frequently referred to officers appearing to take the side of their colleague under investigation. The following is an example of a common response, in this instance taken from a Calgary Police Commission review of a police dominated complaints procedure (1999, p. 92):

- 68% of complainants reported that the process was biased and cited the perception that investigating officers were biased in favour of fellow officers and that the process was meant to 'protect the police'.
- Approximately 80% of complainants declared themselves dissatisfied with the outcome of their complaint. Between 33% and 45% of complainants reported that nothing had worked well in the process.

Similarly, in the UK, a study of complainants' experiences found that, 'nearly two-thirds of the sample were dissatisfied because they felt it was wrong in principle for the police to investigate complaints against their own number' (Brown, 1987, p. 37).

The complainant surveys showed that, on the whole, the question of 'who' handled the complaint was at least as important, or more important, than 'how' the complaint was handled. Of particular note was the fact that, under a mixed system, complainants who believed their matter would be investigated by an independent agency felt deeply betrayed when the complaint was referred back to police. For example, in Landau's (1996) study of the system oversighted by the Ontario Police Complaints Commissioner, 75% of complainants interviewed believed the Commissioner was 'not at all, or not very involved in their case' (p. 307). A sense of betrayal was evident in comments such as the following (p. 304).

- I thought that this organization has their hands tied and they do not have the capability to carry on a separate investigation from the police force. I don't think they could do anything for me.
- It was the greatest shock – as soon as I phoned them, they passed all the information to the police.
- If they really were an independent body, they would do their own investigations from the start.

In the UK, Maguire & Corbett (1991) obtained similar responses when comparing complainants' experiences of cases 'supervised' by the Police Complaints Authority with those managed by police without supervision (pp. 161, 176):

> Respondents whose cases had been supervised were slightly happier than the remainder, but the overall levels of confidence and satisfaction were uncomfortably low... Those who awarded the PCA, as it were, 'marks for trying' tended to feel that the Authority's independence and effectiveness were compromised, either by the fact that investigations were carried out by the police, or by close links between the PCA and the police.

Not surprisingly, in surveys that asked which agency complainants would prefer to handle their matter, the large majority expressed a preference for an independent agency. What is also of note in this context is that, as with the public opinion surveys, this view should not be taken as exclusive to police. To quote Landau again (1994, p. 58):

> Many see the problem outside of the context of the Metropolitan Toronto Police *per se* to one of the nature of organizations in general, 'like doctors investigating doctors' or other professional situations in which a 'brotherhood' exists.

It was also not surprising that chapter 4 reported that the only independent agency in the sample – the Police Ombudsman for Northern Ireland – generated majority satisfaction amongst complainants on almost all criteria. Substantive independence appears to have been crucial to its success, but close attention to procedural justice principles also appeared to be crucial. The Ombudsman obtained overall satisfaction levels averaging 57% over eight years, with peaks of 65% and 63% (PONI 2007, 2009, 2014a). This was despite minority satisfaction with outcomes – averaging 41%. At the same time, high scores were obtained on most process measures. Crucially, high scores were obtained on fairness (averaging 70%) and impartiality (73%). An average of 69% said they would use the system again. It would appear then that while the problem of evidence in police complaints makes it difficult to generate majority complainant satisfaction on outcomes, the overall experience can still be very positive given independence and quality processes.

Chapter 5 challenged the notion that police – as a key stakeholder group in the complaints and discipline system – are invariably attached to in-house investigations and adjudication. Police have an obvious stake in the complaints and discipline process as the potential subjects of complaints, with varying degrees of experience as complainants themselves and/or as investigating officers and adjudicators. Surveys of police showed highly variable experiences when it came to both police-dominated and mixed systems, with some high levels of dissatisfaction around process and ouctomes. Surveys also showed that police are capable of seeing the value of external investigations, at least in terms of public confidence. As with complainants, the chapter highlighted the work of the independent Police Ombudsman for Northern Ireland. The Ombudsman obtained overall satisfaction levels amongst police averaging 70% over eight years, with peaks of 74% and 73% (PONI, 2007, 2008, 2014b). Majority satisfaction was obtained on outcomes (averaging 82%),

with high scores on most process measures, including an average 83% on fairness and 91% impartiality. On average, 70% agreed the system made police more accountable.

Chapters 6-10 reviewed the powers, functions and achievements of diverse oversight agencies around the world. The sad conclusion from these studies is that most agencies lack sufficient control of the investigation and adjudication of complaints to do the job properly. The result is continuing problems of police misconduct, complainant alienation, and inadequate public confidence in police integrity and accountability. These studies also show a problem with a lack of evidence gathering by these agencies about their impacts. Nonetheless, it is clear that most systems are designed in defiance of democracy and science. They represent a weak compromise. The chapters highlighted the enormous gap between public expectations and real practice in most locations.

The inescapable conclusion from the points made above is that complaints and discipline systems require a large direct role by oversight agencies in the management of complaints. The evidence is overwhelming that police internal investigations – even where they are conducted professionally – compound the cynicism and distrust already felt by complainants. Oversight agencies that merely audit or review police investigations also aggravate the alienation felt by complainants. At a minimum, therefore, oversight agencies should have control of the investigation and adjudication of more serious complaints and incidents. Obvious examples include alleged assaults involving injuries, deaths and serious injuries in police custody; traffic crashes; and all allegations of corruption or conflicts of interest (Liberty, 2000). There is also a strong case for all complaints, even the most minor, to be dealt with independently – as is the case in Northern Ireland – given that complaints deemed as 'minor' might not be seen that way by complainants (IPCC, 2009, p. 7). However, where policy-makers are unwilling to go that far, one option is for these complaints to be managed by negotiation. Some complainants might be quite happy to have their matter dealt with by a police professional standards office or an officer's supervisor. Others might be adamant that they want nothing to do with police and should be granted the right of an independent hearing. An important qualifier to this point is that numerous complaints will be best dealt with through alternative dispute resolution procedures at the earliest opportunity (see below). But, again, the management of this can be done externally.

This raises an obvious question about how independent systems are to be resourced. In theory, financial costs per complaint should not be significantly different whether managed internally or externally. However, significant efficiencies are likely to be achieved by including police matters within a larger 'public sector integrity commission' (Prenzler & Faulkner, 2010). This also has the strong advantage of treating all public servants, police and politicians according to the same standards and processes of independent scrutiny. It also means that, in most locations, oversight agencies – or 'integrity agencies' – will need to have offices in regional locations. This makes complainant and police access much easier, and it means that civilian investigators can easily access police (and other government) premises and quickly takeover the scenes of major incidents. Concerns about a possible loss of focus on police-specific issues can be addressed through creation of a dedicated policing unit within the wider integrity agency.

There is also an obvious question about how more independent systems are to be staffed (chapter 2). Very few, if any, agencies appear to exclude former police entirely. Some agencies, such as the New South Police Integrity Commission, exclude all former and current NSW officers (*Police Integrity Commission Act 1996*, s. 10). Others are less specific about who can and cannot be employed. Careful judgement clearly needs to be exercised in balancing the needs of real and perceived independence against the advantages of employing carefully selected and supervised former officers. A 2011 review of the Northern Ireland Police Ombudsman is instructive here. The review found in favour of the Ombudsman's independence in processing contemporary complaints. At the same time, it reported that 'there is a substantial proportion of investigative staff (around 41%) from a former police background', with the implication that this was above an appropriate threshold for public confidence (Criminal Justice Inspection Northern Ireland, 2011, p. 32). One potentially useful set of guidelines, based on extensive consultation, was provided by Liberty (the

UK National Council for Civil Liberties) in relation to the Independent Police Complaints Commission (Liberty, 2000, p. 40):

> The investigative staff of the IPCC should comprise at least 75% civilians with no more than 25% seconded or ex-police officers.
> The investigations should take place in a team structure reflecting the above proportions.
> The IPCC should have the decision as to who are selected as seconded police officers.
> Investigative teams should always be headed by a civilian team leader.

Liberty also recommended the creation of disciplinary panels consisting of an assistant chief constable and two non-police members (2000, p. 49). Guidelines like these can be very helpful, subject to local conditions and changing cicumstances.

The analysis so far suggests that independence on its own will not automatically satisfy the key criterion of stakeholder confidence. External agencies will still need to pay close attention to process criteria of communication, timeliness and fair treatment. These criteria should be satisfied given the right resources, staffing and management in what amounts to a 'win-win' outcome for complainants, police and the public. Again, the example par excellence is the Police Ombudsman for Northern Ireland. The Hong Kong Independent Commission Against Corruption is also exemplary, although its jurisdiction is confined to corruption across the public and private sectors. It has been particularly successful in public outreach, and obtaining high levels of public confidence in the Commission and in the integrity of public institutions (Graycar & Prenzler, 2013).

Alternative Dispute Resolution

A number of the preceding chapters of this book identified valuable lessons about alternative dispute resolution. The results are particularly compelling when complainant and officer experiences are compared. Mixed results were found for informal resolution and conciliation, with particularly strong results for mediation.

Chapter 4 referred to a number of studies with largely negative implications for informal resolution processes – which normally involve an apology or explanation from a senior officer to a complainant. In Victoria, Australia, 'management intervention' was rated unsatisfactory by almost three-quarters of complainants (Office of Police Integrity, 2008). A study of 'local resolution' in the UK found that 41% of complainants were satisfied and 51% dissatisfied, while only 27% of police were satisfied and 54% were dissatisfied (May, et al., 2007). A Cincinnati study found officers fairly divided over informal resolution procedures: 56.5% believed the outcome was fair, while 42.1% were satisfied with the process and 47.8% were dissatisfied (Ridgeway, et al., 2009).

On a more positive note, in a Northern Ireland study, 52% of complainants stated their complaint was resolved to their satisfaction through informal resolution (PONI, 2005). In a Queensland study, both complainants and police were very positive about informal resolution carried out by police officers trained by civilian specialists in alternative dispute resolution: 76.2% of complainants and 83.4% of police were satisfied with the process, and 60.1% of complainants and 75.8% of officers were satisfied with the outcome (Criminal Justice Commission, 1994). Satisfaction rates were lower for both groups who experienced a formal investigative process. In addition, the study found that formal investigations took 2.5 times longer to complete than informal resolution (see Ede & Barnes, 2002, p. 123).

As noted in chapters 3 and 4, complainant dissatisfaction with informal resolution often related to lack of information, non-receipt of an apology and police control of the process. Efforts at resolution were often considered tokenistic, providing a convenient 'bureaucratic suppression of a dispute' (Young, et al., 2005, p. 300). In a Northern Ireland survey, 58% of complainants wanted to meet with the officer who was the subject of their complaint, (PONI, 2005). For police, dissatisfaction with informal resolution was largely related to perceptions of bias in favour of the complainant, alleged triviality of complaints, delays, and lack of information. A focus group study

of New York City police officers who had been investigated found that 'the overwhelming majority' expressed a preference for a 'face-to-face interaction' with complainants (Sviridoff & McElroy, 1989b, p. 36).

There would seem to be a place for a well-managed informal resolution option in a model police complaints system, especially where either party to a complaint is not willing to participate in mediation. At the same time, mediation would appear to be the more desirable default option. In the surveys of complainants and police covered in chapters 4 and 5, mediation attracted consistently positive responses from both groups. In England and Wales, Young, et al. (2005) compared participants' experiences in a form of mediation (conducted by specialist police) with conciliation processes that lacked contact between the complainant and the subject officer. Overall, 61% of complainants and 85% of officers in the restorative group were satisfied, while 33% of complainants and 69% of officers who experienced conciliation were satisfied. In terms of outcomes, 53% of complainants and 86% of police in the restorative group were satisfied, while 33% of complainants and 54% of police in the conciliation group were satisfied with the outcome.

A study in Denver involved completely independent mediators. Schaible, et al. (2012) found that 78.7% of complainants and 80.5% of police who experienced mediation were satisfied with the process, compared to 10.5% of complainants and 12.0% of police in the 'non-mediation' sample. Furthermore, 62.9% of complainants and 72.7% of police were satisfied with the outcome in mediated cases compared to 6.6% of complainants and 48.9% of police in the non-mediated cases.

In Portland Oregon, 51.6% of complainants and 70.0% of police officers who experienced mediation were completely or partially satisfied with the outcome, 93.3% of complainants and 95.5% of officers felt they had the opportunity to explain themselves, 100.0% of complainants and officers felt the mediator was 'fair to both sides', and 96.7% of complainants and 85.7% of police stated they would recommend mediation to others (Independent Police Review Division, 2003).

Given this evidence, we can say confidently that a state-of-the-art complaints and discipline system must have mediation available and should encourage mediation as the likely best option for many complainants. The evidence is variable about who can conduct mediation. Nonetheless, the engagement of mediators external to police is probably ideal. This could involve specialist staff in an oversight agency or government or private sector mediation specialists. A regionalised, public sector-wide, integrity commission would provide a good means of service provision were mediation to be adopted on the large scale that appears appropriate.

3. Optimising Ethical Conduct

The first two sections of this chapter advocated independent control of complaints processing, and the widespread availability of mediation, as key methods for satisfying stakeholder concerns about impartiality and fairness in response to complaints against police. The evidence is strong, arguably overwhelming, in support of these two approaches. But how effective are they in optimising ethical conduct amongst police?

Starting with informal resolution and mediation, only one study covered in the book considered possible remedial effects. Young et al. (2005) found that only two out of 13 officers who experienced mediation 'believed that the complaint would lead them to altering their behaviour' (p. 307). This is disappointing but perhaps not too surprising given there is little evidence that victim-offender mediation reduces crime (Hayes, 2007). A mediation event might take two hours and the subject then returns to their normal situation, with its many powerful influences on behaviour. However, while other criteria make the case for mediation, the potential for remedial effects should be developed from the lessons learnt in the analysis of events covered in mediation.

The evidence is stronger regarding the role of independent oversight agencies in improving police conduct. Unfortunately, numerous agencies show little or no direct positive effect. This is most likely the result of inadequate jurisdiction, powers and resources. Prenzler's (2009) review of agency performance indicators internationally came to the following conclusion (p. 165):

> The limited evidence suggests that the more interventionist an agency is, and the more it engages in independent investigations or close supervision of police investigators, the more likely it is to score on positive indicators than preceding police dominated systems.

The 'positive indicators' included complaint substantiation rates (tending to be somewhat higher under oversight); complaint reduction; confidence ratings from surveys of the public, complainants, police and experts (e.g., lawyers, academics, journalists); and police acceptance of disciplinary recommendations. The more powerful anti-corruption agencies – of the type developed in Australia and Hong Kong – are widely considered to be fairly or very effective in both deterring serious forms of misconduct and in 'secondary prevention' by identifying and shutting down more serious misconduct (Graycar & Prenzler, 2013; Prenzler, 2009). However, the most challenging task for oversight agencies is to demonstrate large-scale primary prevention of misconduct across the spectrum – not just unjustifiable deadly force, serious assaults, drug corruption and extortion; but excessive force, discrimination, oppressive conduct, rudeness, inaction, and other common problems in policing, some of which are manifested in complaints.

Chapter 11 of this book showed that oversight agencies can go beyond deterrence and incapacitation to work with police departments in generating demonstrable improvements in police conduct through changes to procedures, training and supervision. Again, looking at the example of Northern Ireland, early efforts at cooperation were put on a more formal footing in 2010 with agreement on a 'focused PSNI Complaints Reduction Strategy' (PONI, 2013, 6). A number of areas of improvement were documented, including in baton use, handcuffing, search procedures, vehicle pursuits, and police responses to child abuse and hate crimes (PONI, 2010). Two of the areas of more demonstrable achievement related to complaints involved measures to reduce duty failure allegations (related to investigations) and incivility allegations (PONI, 2010).

In the bigger picture, it has to be said that the Police Ombudsman for Northern Ireland and the Police Service have struggled to address the underlying causes of complaints and reduce complaints It appears that increased public confidence drove an initial increase in complaints following the establishment of the office, and this has been followed by a long period of fluctuating complaint numbers (PONI, 2014c, p. 9). However, there are other indicators of success. The issue of the impact of the Northern Ireland Police Ombudsman needs to be placed in the context of the deeply entrenched and extreme sectarian conflict that led to the 1998 Good Friday Agreement and the associated policing reform package (Independent Commission on Policing for Northern Ireland, 1999). The establishment of the Ombudsman's Office was just one element of a complex and interconnected set of changes aimed at creating a less biased, more democratic, police service (Ellison, 2007, p. 251). The whole reform process, including police reform, has seen very large reductions in incidents of violence related to sectarian conflict – including killings, injuries, shootings and bombings (PSNI, 2013). There is also good evidence of major improvements in police-community relations. The 1999 report of the Independent Commission on Policing for Northern Ireland reviewed public opinion surveys and noted a division of approval ratings for police: more than 80% among Protestants and less than 50 per cent among Catholics (1999, p. 13). Improvements have been tracked over time. A 2014 survey found the following positive and consistent views of police (Northern Ireland Policing Board, 2014, pp. 6-8):

- 70% of Catholics and 73% of Protestants considered the performance of the Police Service as a whole as 'very/fairly good'.
- 68% of Catholics and 77% of Protestants were satisfied police 'treat members of the public fairly in Northern Ireland'; while 10% of both groups were 'fairly/very dissatisfied' in regard to fairness.

A repeated concern amongst critics of civilian control of complaints is that police will abandon responsibility for integrity management and discipline. However, there is a large field of work in integrity management outside complaints processing; and oversight agencies can serve an important

accountability in testing the effectiveness of police integrity strategies. Measures will include complaints, as well as stakeholder perceptions and experiences. The strategies that should be managed by police are complex. The presence of oversight agencies does not preclude police from conducting investigations and reviews at their own initiative and meting out discipline where appropriate. Both agencies can engage in covert tactics and integrity testing. In addition, police should be primarily responsible for recruit screening, pre-and in-service training, supervision and remediation. Complaint profiling and early intervention systems have been shown to be particularly beneficial in reducing complaints, especially repeat complaints against individual officers and units (Macintyre, Prenzler & Chapman, 2008; Walker, Alpert & Kenney, 2001).

A small number of police departments are on the record in demonstrating large improvements in measures of ethical conduct, with lessons that have wide application. For example, in New York City, the introduction of a 'courtesy, professionalism and respect policy' (CPR) in two Bronx precincts in the 1990s led to reductions in complaints of 54% and 64%, against the trend of increasing citizen complaints during the alleged 'zero-tolerance' crackdown on crime (Davis, Mateu-Gelabert & Miller, 2005). In Tasmania, Australia, police generated an extraordinary 87% reduction in citizen complaints over a decade through a combination of complaint profiling and early intervention; and complaint analysis and modified procedures and training (focused on de-escalation) (Porter, Prenzler & Fleming, 2012). The main contribution of the Tasmanian Ombudsman was to verify the strategies and data. In both the Bronx and Tasmanian cases, reductions in complaints were achieved along with reductions in crime. Prenzler, Porter and Alpert (2013) also reviewed case studies of successful force reduction in policing, using a range of measures including complaints, police and citizen fatalities and injuries, and use-of-force reports.

Two other integrity measures should be briefly mentioned. The legal regulation of policing procedures has also been shown to reduce misconduct. The most outstanding example is the prevention of investigative misconduct, especially coerced confessions, through compulsory recording of police interviews (Dixon, 2006; Graycar & Prenzler, 2013). In addition, recording technology has now evolved to the point where body-worn cameras are showing enormous potential in improving police conduct and reducing complaints, including false complaints. In a pioneering study using experimental and control groups, with two years of post-intervention data, the body-worn camera initiative of the Rialto Police Department in California was associated with large reductions in police use of force reports and public complaints (Farrar, 2013, 2014).

Conclusions

This chapter has brought together a wide range of evidence from the preceding chapters in this book. The evidence is complex but generally consistent and clear about what needs to be done to optimise the management of complaints against police and ensure best practice in police integrity management more generally. The focus has been on the role of civilian oversight agencies in attempting to redress the many deficiencies identified in police internal processes. It is clear that these agencies are essential to police accountability and the independent management of complaints against police is an essential requirement. And a range of performance indicators need to be applied to ensure agencies are engaged in best practice and achieving their goals. A properly empowered and resourced oversight agency – best structured as a public sector wide integrity agency – should fulfil the aspirations of all stakeholder groups if it is also properly independent and focused on quality procedural justice processes. Investigations and discipline will constitute key roles in determining responsibility for possible breaches of standards and bringing offenders to justice, and preventing misconduct through deterrence and incapacitation. At the same time, informal resolution and mediation are essential strategies for a fulfilment of a broader restorative justice mission. The elevation of oversight bodies as authoritative and major players in police accountability still leaves large scope for police responsibility in integrity management. Oversight agencies should independently assess police achievements, but also work with police, especially through research and policy development, to ensure police practices are as lawful and ethical as they can be.

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RESEARCH AND EVALUATION

Towards a Model Public Sector Integrity Commission

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This article examines the current debate in Australia about public sector integrity and the idea of a standing anticorruption commission. From this debate the article outlines a specific type of 'public sector integrity commission' that in principle should have the necessary powers and techniques at its disposal to minimise corruption while ensuring efficiency and fairness. The debate has been most active in jurisdictions that have not had an anticorruption commission – mainly in Victoria, South Australia and Tasmania – but debate about integrity commissions has occurred in all jurisdictions. The authors argue that anticorruption commissions are essential to ensure the integrity of the public sector and that a model commission should: cover all elements of the public sector; independently investigate serious and mid-level complaints; have own motion powers to investigate any matter; have summary authority to apply administrative sanctions; make use of a range of investigative tools; not be tasked with combating major and organised crime; and be held accountable to citizens through a parliamentary committee and a parliamentary inspector.

Key words: *anticorruption commission*, *public sector integrity*, *corruption prevention*

The state of public sector integrity systems in developed nations has changed significantly in the last 20–30 years. Traditional pillars– such as the separation of powers, the media, Ombudsmen and Auditor-Generals – have been supplemented by new 'watchdog agencies' – including anticorruption commissions (Brown and Head 2005; Pope 2000). Policing has been one of the lead domains, with police conduct scandals driving the introduction of powerful police commissions (Parliament of the Commonwealth of Australia 2009:84–88). The broader public sector has also been subject to enlarged forms of external oversight. Anticorruption commissions, tasked with addressing misconduct across the public sector, have been established in New South Wales (NSW), Queensland and Western Australia (WA), with new commissions due to begin operation soon in Tasmania and Victoria. While more active debate has occurred in jurisdictions without anticorruption commissions there has also been debate about the powers and operations of existing agencies (Fraser 2009). Overall, there appears to be a need to develop greater consensus and a more consistent approach to ensuring probity in the public sector.

Method

The purpose of this study was, firstly, to examine and describe the contemporary debate in Australia about public sector integrity systems and, secondly, to contribute to the debate by outlining the characteristics of a model commission in response to the key issues. In order to analyse the debate, initial searches were made of the newspaper database *Factiva* for 2004–09. The keywords used were 'corruption', 'anticorruption', 'integrity', 'oversight', 'watchdog', 'ethics', 'ethical standards', 'oversight', 'accountability', 'complaints' and 'public sector'; as well as the names of existing government oversight bodies, which were obtained from government websites. Information from *Factiva* was supplemented by searches of parliamentary debates, parliamentary reports,

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and reports from oversight agencies and their inspectors. The results of this research are reported in a narrative format in Part A – 'The Debate' – and the issues are evaluated in Part B – 'The Issues'. This material is then re-ordered into a summary set of key characteristics of a proposed model public sector integrity system. The results are set out in Part C – 'A Model Commission'.

One of the problems with the issue of a model integrity commission is that there are no accurate measures of public sector misconduct and integrity which can be used to assess the impact of different systems, and there is a dearth of research on the topic. Subsequent sections in this article draw on available measures or forms of evidence, including public opinion surveys and stakeholder opinion as well findings from investigations. However, the focus is more on arguments about principles – including principles of coverage, adequacy for the task and fairness – and necessarily relies on speculation about likely effectiveness. The proposed model is designed to help focus debate and advance best practice. The model is applicable in advanced democracies, such as Australia, and it is expected that key aspects will have relevance to emerging democracies with less funds available for expenditure on public institutions.

Part A: The Debate

Victoria

The Victorian debate on public sector integrity systems has arguably been the most vigorous in Australia in the past five years. Responsibility for combating corruption in the public sector lies with the Office of Police Integrity (OPI) and the Ombudsman. The Victorian Labor government consistently resisted calls to establish a public-sector-wide commission, claiming the OPI and Ombudsman have sufficient powers and jurisdiction, and that anti-corruption commissions are an excessive and unnecessary expense which seldom produce criminal convictions (Parliament of Victoria, Legislative Council 2007:2250–2260). The Liberal/National Opposition is among a number of key actors in favour of a commission, arguing that the OPI and the Ombudsman are inadequate for the task. The Leader of the Opposition in the Legislative Council in 2007 argued that:

> It is clear that we have limited independent means of public scrutiny in regard to the executive – or indeed in regard to the bureaucracy – at the present time . . . as the head of the Office of Police Integrity, [the Director's] powers are confined to investigating police misconduct . . . The Ombudsman does not have power to investigate judicial bodies or politicians – that is us – and I think we should be aware that we need to be as equally subject to investigation as any other part of government (Parliament of Victoria, Legislative Council 2007:2555).

The Victoria Police Association has been particularly strident in support of a comprehensive commission, because 'corruption does not, has not and will never start and stop with the police force' (Police Association Victoria 2008:15; Davies 2008). The Greens have also been supportive, emphasising the need for a commission with a capacity for investigation as well as prevention, and education (Parliament of Victoria, Legislative Council 2007:2546). Succumbing to pressure, in November 2009 Premier Brumby announced a review of all aspects of Victoria's integrity system. In June 2010 the government accepted the recommendation of the 'Proust Review' in support of a new 'Victorian Integrity and Anti-corruption Commission' (Brumby 2010; Public Sector Standards Commissioner 2010).

South Australia

The situation in South Australia has been similar to Victoria. Responsibility for investigating and preventing public sector misconduct largely rests with the Police Complaints Authority (PCA), the Ombudsman, an anti-corruption branch within the police force, and the Auditor-General. The South Australian Labor government has argued that existing arrangements are adequate (Parliament of South Australia 2007:834), that a commission would be too costly and 'nothing more than a lawyers' picnic' (Wiseman 2008:1). The government

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also claimed that commissions can ruin a politician's career by publicly investigating allegations – describing this power as 'a gift to malicious slanderers' (Parliament of South Australia 2008:3891). The Liberal Opposition, prominent legal figures, police union and high profile federal independent Nick Xenophon have all expressed support for a commission (Kemp 2009; Parliament of South Australia 2007:811; Wiseman 2008).

Tasmania

The Tasmanian debate has also been vigorous. The Liberal Opposition, Greens and Tasmanian Police Association campaigned for an anticorruption body for many years against dogged resistance from the Labor government. Pressure intensified following the resignation of former Deputy Premier, Steve Kohns, who 'admitted misleading parliament over the appointment of a magistrate' (*ABC News* 2008). After Premier Paul Lennon's resignation in May 2008 the government changed its position. A Joint Select Committee on Ethical Conduct was set up to inquire into the issue. The Attorney-General told parliament:

> The Government is very much committed to having some form of ethics commission in this State . . . I do get distressed, as I have said in the House before, about the lack of trust that the public has in politicians as a whole – in all of us . . . I think we are all very keen to see the ethics committee report so that we can move forward and establish a commission in this State with the appropriate powers (Parliament of Tasmania, House of Assembly 2009:126).

In July 2009 the final report of the Select Committee recommended an 'Integrity Commission' be established, legislation was passed by the parliament and the commission is due to begin operations in mid-2010 (JSCEC 2009; *Integrity Commission Act 2009*).

New South Wales

The Independent Commission Against Corruption (ICAC) was established in 1988 following decades of controversy over corruption that reached to the highest levels of government. The research for this article was unable to identify any political parties or other important actors opposed to the existence of the ICAC. There has, however, been some debate about specific aspects of its functioning. Most recently there has been debate about whether or not the Commission should be permitted to prosecute matters itself (NSW Parliament 2008:10304). New South Wales also has a separate Police Integrity Commission (PIC), which bifurcates the integrity commission system. The PIC was established in 1996 when the Wood Royal Commission found corruption in the Police Force that the ICAC had failed to detect (Wood 1996).

Queensland

In 2002 the Crime and Misconduct Commission (CMC) replaced the Criminal Justice Commission (CJC). The CJC was established in 1989 following findings of police and political corruption by the Fitzgerald Inquiry (1989). The debate in Queensland is characterised by a seemingly universal acceptance of the value of the CMC, with no important actors arguing against its existence. There have, however, been debates about particular aspects of the Commission's functioning, primarily concerning the policy of 'devolution' – whereby primary responsibility for investigating complaints is often put back on the relevant public sector agency, subject to review by the Commission. Devolution has drawn the ire of journalists, academics and lawyers as a return to the pre-Fitzgerald days of 'Caesar judging Caesar' (PCMC 2009:29).

Western Australia

Western Australia is the only other jurisdiction with an established anticorruption commission monitoring the whole public sector. In 2004 the Corruption and Crime Commission (CCC) replaced the Anti-Corruption Commission (ACC), introduced in 1996. The ACC was set up after the 'WA Inc.' scandal, involving financially disastrous collusion between politicians and business leaders, but the ACC was

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deemed by the Kennedy Royal Commission into the Western Australia Police to have lacked adequate transparency and adequate powers – such as the capacity to hold public hearings or conduct sting operations (Kennedy 2004). The CCC also has bipartisan political support and community support. It has faced questions over its credibility in relation to the devolution of disciplinary decisions which have allegedly been undermined at the departmental level, and it has been accused of conducting 'witch hunts' against high profile ex-politicians (Murray 2006:2).

Northern Territory

The Northern Territory appears to have had the least amount of public debate on the topic. Issues of public-sector corruption are dealt with by 'agency policy, investigations by the Ombudsman, or reporting by the Auditor-General' (Northern Territory Legislative Assembly 2009). According to the Minister for Public Employment, the Territory has not 'experienced the corruption and maladministration other jurisdictions have endured in their public sectors' (Northern Territory Legislative Assembly 2009). The *Ombudsman Act 2009* included an 'own initiative' power in relation to investigating police conduct.

Australian Capital Territory (ACT)

Debate in the ACT has been very limited since 2002 when the Standing Committee on Justice and Community Safety found an anticorruption commission was beyond the means of the Territory (Australian Capital Territory Legislative Assembly 2001:14, 3742). However, the Inquiry found there was a need for the kinds of functions performed by anticorruption commissions and recommended that:

> The Government, in consultation with the Auditor-General, develop a model for a new function which provides for both (1) the investigation of complaints about behaviour lacking integrity and (2) an educative and preventative role in relation to behaviour lacking integrity (Legislative Assembly for the Australian Capital Territory 2001:15).

The Report received bipartisan support, but since then there has been just one reference to the issue in Hansard between 2002 and September 2009 (Australian Capital Territory Legislative Assembly 2002:3730–3747).

The Commonwealth

The debate has also been very low key at the federal level. The main task of the Australian Commission for Law Enforcement Integrity (ACLEI) is to 'detect, investigate and prevent corruption in the Australian Crime Commission and the Australian Federal Police' (ACLEI 2009). There is no body with the same mission in relation to the entire public sector including politicians. The Commonwealth Ombudsman is able to investigate commonwealth government departments but without the same powers as ACLEI (such as applying for search warrants), and with no jurisdiction over ministers or other politicians (Parliament of the Commonwealth of Australia 2009:84–88; OPI 2007:5). The Commonwealth Ombudsman (2004:5) has stated that 'the Ombudsman should not be the chief agency responsible for investigating corruption allegations'. The Greens and the Australian Federal Police Association have called for ACLEI's mandate to be extended to cover politicians and the public sector, but these calls have been quietly rejected by both the Labor government and the Coalition (Gilchrist and Colman 2004). A recent review of models of police oversight by the Parliamentary Joint Committee on the ACLEI raised the issue of the need for commissions to have education and prevention functions and for the parliamentary committee on ACLEI to have access to an inspector (Parliament of the Commonwealth of Australia 2009).

Part B: The Issues

The following subsections outline the eight main areas of contention drawn from the debate, with a brief assessment of the various arguments by the authors.

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1. Are Existing Measures Sufficient?

The governments of Victoria and South Australia have insisted that their existing integrity systems – consisting primarily of Ombudsmen, Auditors-General and police oversight bodies (the OPI and PCA) – are the 'most appropriate models for dealing with corruption' in their states (Parliament of Victoria, Legislative Council 2007:2551). The main rejoinder to this is that the traditional Ombudsman and Auditor-General is restricted to responding to complaints about administrative decisions deemed to be unfair or in error, or assessing financial reports, rather than conducting forensic investigations into allegations of corruption or misconduct – including investigating suspicions on an own motion basis without complaints (see Wood 1996:77).

The implication of this is that corruption can remain hidden when there is no agency with adequate powers and comprehensive coverage of the whole public sector. This was the main finding of the Proust Review in Victoria (Public Sector Standards Commissioner 2010). Critics have argued that corruption is much more likely to be exposed and stopped in jurisdictions with anticorruption commissions. For example, former South Australian Auditor-General Ken MacPherson claimed that the defence of existing institutions in Victoria and South Australia fails to recognise that 'in those other jurisdictions [Queensland, NSW and WA] . . . there also exist the same institutions as we have in this state, but these have been shown to be not up to the task and a corruption body was also required' (Parliament of South Australia 2007:811). Cases in point include systemic corruption in New South Wales, Queensland and Western Australia before the establishment of commissions. Some post-reform cases include exposés of corruption in corrective services in New South Wales and Queensland, the 'travel rorts' inquiry into politicians misuse of expense accounts in Queensland, the exposure of corruption in the Wollongong City Council and Railcorp, and the exposure in Western Australia of undue influence by ex-politicians turned lobbyists. In response to the allegation that commissions fail to produce results, in 2009 CCC Commissioner Len Roberts-Smith reported that in a five year period the Commission obtained 42 convictions from 51 charges (Taylor 2009).

Public opinion is also strongly supportive of the principle of an independent commission – as high as 98% in a recent survey in Western Australia (CCC 2009b:41; also CMC 2009c:54). Public confidence in existing commissions is also generally high – up to 93% in the most recent survey in New South Wales (ICAC 2006:26; also CCC 2009b:36). There is also strong support for the view that commissions improve accountability and reduce corruption (CCC 2009b:36-38; CJC 2000; ICAC 2006:12, 27).

Another area where it is alleged commissions are more successful than Ombudsmen is in research, education and prevention. The *Inquiry into Law Enforcement Integrity Models* by the federal Parliamentary Joint Committee on ACLEI recommended that ACLEI undertake 'education of law enforcement personnel, public education and awareness-raising, corruption-risk reviews, [and] research' (Parliament of the Commonwealth of Australia 2009:vii). The Tasmanian Joint Select Committee report on ethical conduct emphasised the need for a 'dedicated research function to support the continual development of standards and codes of conduct' (JSCEC 2009:9; see also Public Sector Standards Commissioner 2010:37). Government departments have also expressed support for the advice provided to them by oversight bodies (Clarke 2008; Stewart 2008).

2. Are Anticorruption Commissions Too Expensive?

A common charge against anticorruption commissions is that they are too expensive (*ABC News* 2008; Parliament of Victoria, Legislative Council 2007:2550). Operating expenses of commissions in 2006–07, cited by the Tasmanian government (2008:78), 'ranged from $16.2m (and a staffing establishment of approx 120) for the NSW ICAC, $25.5m for the WA CCC (148 full time employees), and $35m for the Queensland CMC, which has about 270

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staff in total'. These are big ticket items for public money. Nonetheless, it has been argued that it is money well spent in terms of improving public confidence in government and improving integrity across the public sector, so long as performance measures are in place (Brereton 1999).

It has also been argued that cost-shifting should reduce the overall cost to taxpayers. The Tasmanian Department of Public Prosecutions suggested that, in relation to police integrity, funding an anticorruption commission:

> does not necessarily mean a large impost to Government: since what is required is something . . . Police ought to have done, one would expect savings to be found . . . from the Police budget itself to establish a truly independent and effective investigative body (Ellis 2008:37).

Complaints and other indicators of misconduct have to be investigated, and misconduct prevention activities are essential. The work can be spread across departments or concentrated in an independent commission with greater expertise and technical capacity (Kalimnios 2008; Parliament of the Commonwealth of Australia 2009:22; Tesch 2008). The size of a jurisdiction, in terms of population, should be irrelevant to these considerations as misconduct can occur in both large and small jurisdictions. Given that 'coverage' of the public sector is often seen as a key criterion, then smaller jurisdictions would be expected to have less costly commissions and resourcing should be governed primarily by complaints and assessments about levels of misconduct and risks.

3. Should Anticorruption Commissions Conduct Independent Investigations or Devolve Responsibility Onto Government Departments?

Devolution is something of a sleeper issue that has been inadequately recognised in the debate in most locations. The term refers to the practice of integrity commissions referring complaints back to the relevant department for investigation and resolution. There is often an assumption by proponents of anticorruption commissions that existing commissions carry out a lot more investigations than is the case. While they may have the capacity in legislation, the more common practice is to select out a small proportion of complaints for independent examination. The ICAC 'acts upon' about 15% of matters that come to its attention (ICAC 2009:33), while the OPI directly investigates only 3% of complaints that come to its notice. (OPI 2007:42). A Victoria Police survey found that two thirds of complainants were dissatisfied with most aspects of the way their complaint was managed and that this was related to the fact that 78% expressed a preference for the independent processing of their complaint (Prenzler et al. 2009).

The debate over devolution has been most intense in Queensland. The CMC and Parliamentary Crime and Misconduct Committee argued devolution 'has a crucial role to play in building the capacity within agencies to identify and avert risks of misconduct that could be peculiar to that agency' (PCMC 2009:30). The Committee has argued that devolution can work by '(a) ensuring there is adequate distance between the officers being investigated and those doing the investigating, and (b) ensuring the CMC provides oversight, review or full investigation where appropriate' (PCMC 2009:30), but failed to specify what this means in practice. Devolution is widely viewed with mistrust as 'akin to a jury system, wherein the entirety of the jury is made up of family and friends of the accused' (Walsh 2008:2). The CMC investigates 'less than two percent' of the approximately 3,500 complaints it receives each year (CMC 2008:26), despite the fact that research it commissioned in relation to complaints against police found that 91% of public respondents supported the view that 'complaints against the police should be investigated by an independent body not the police themselves' (CMC 2009c:54). The situation has prompted disillusionment among scholars, journalists and lawyers; and generated profound dissatisfaction among complainants (Chamberlin 2002; CMC 2009c:47; Koch and McKenna 2009). The issue took on renewed prominence in 2009 when a major investigation found that police

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had developed improper relationships with informants in prison. Although the investigation was conducted by the CMC it had earlier passed disclosures back to the police for internal investigation (CMC 2009b).

4. Should There be a One-Stop-Shop or a Split Between Police and Public Sector Agencies?

The integrated model in Queensland and Western Australia is favoured by supporters of commissions in jurisdictions where the debate has been most intense. Police unions are particularly vocal in arguing that an integrated agency provides fairness for all public sector personnel and proper coverage of corruption risks. The Police Association of Victoria has questioned why the OPI focuses on police but not the public sector: 'Why shouldn't [the OPI] be the Office of Public Integrity? . . . The Brumby Government just doesn't get the message that corruption does not, has not and will never start and stop with the police force' (Police Association Victoria 2008:15). The Greens have put forward the same argument at the federal level: 'ACLEI does not cover the bureaucracy at large. It does not cover the parliament and it does not cover the matters that the public would want to see it cover' (Commonwealth of Australia, Senate 2009:4828).

New South Wales is unique in having an ICAC and a separate Police Integrity Commission. During the Wood Inquiry the ICAC argued it lacked the resources and full range of powers to properly uncover police misconduct. However, Commissioner Wood (1996:Chapter 5) held the view that policing in New South Wales carried a high risk profile for misconduct to the extent that a dedicated police anticorruption commission was required. The bifurcated system has strong support in New South Wales and there is no imperative for amalgamation. There might be some efficiency gains from amalgamation but the important point is that the current system provides coverage of the public sector by agencies with royal commission powers.

5. Should Oversight Agencies Have 'Own Motion' Powers to Investigate any Matter or Should They Only Investigate Formal Complaints?

Own motion investigative powers can be activated in response to media reports of possible misconduct or intelligence where there is no formal complaint. This is a standard power for integrity commissions and widely seen as an important means of exposing hidden or 'victimless' corruption and preventing the escalation of corruption (Parliament of the Commonwealth of Australia 2009:32; Parliament of Tasmania, House of Assembly 2009:Appendix 4). Proponents of integrity commissions appear to hold to a consensus position in favour of own motion powers, whereas opponents tend to be silent on the issue. A 2001 survey of integrity agencies found that the agencies that lacked own motion powers – mainly Ombudsmen – claimed they needed the power to adequately address suspected misconduct and support public confidence (Prenzler and Lewis 2005).

6. Should Oversight Agencies Have the Power to Adjudicate Matters and Prosecute Matters in the Courts?

A standard feature of anticorruption commissions in Australia is that they do not have the power to take disciplinary action against holders of public office when they believe disciplinary action is warranted. Nor do they have the power to prosecute criminal matters, although in some instances they might be able to prosecute intermediate matters before a misconduct tribunal. The issue has generated surprisingly little debate, but it lies behind widespread disillusionment when individuals found by a commission to have engaged in misconduct are 'let off' with little or no consequence (Prior and Taylor 2009; Smith 2008:2). The problem might in part be solved by granting commissions summary jurisdiction over disciplinary matters, including the power to fine, demote and sack public servants; and to make findings of unethical conduct against politicians; subject to an appeals process. Commissions have also been frustrated with delays

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by public prosecutors (Committee on the ICAC 2008:2) and one option is to allow them to independently prosecute matters in the courts following excessive delays. The CMC in particular has repeatedly expressed frustration with the frequency of findings against it when prosecuting intermediate matters in misconduct tribunals (eg, CJC 1996:3.15). Suggested resolutions to this problem have included better training of tribunal members in inquisitorial administrative approaches to misconduct and greater use by commissions of mediation of complaints (Prenzler 2009:92–93).

7. Should Oversight Agencies Investigate Major Crime?

Currently both the Western Australian Corruption and Crime Commission (CCC 2009a) and the Queensland Crime and Misconduct Commission (CMC 2009a) are tasked with the responsibility of addressing major and organised crime. The idea of adding a crime fighting function to the CCC came from the CMC, although the role is more prominent in the CMC – as indicated by the order of words in their names. The CMC is tasked with dealing with major and organised crime because the Fitzgerald Inquiry found that police had failed in this area and because of the connections it identified between organised crime and police corruption. However, the Fitzgerald Report (1989:372) only saw a very limited role for the Commission in the area of criminal intelligence coordination, but this role has been significantly enlarged.

It has been alleged that the crime fighting role divides the focus of integrity commissions. It distracts it from dealing with ordinary complaints; and the task puts it at high risk of corruption given that organised crime is a major corrupter of law enforcement (Stewart 2008:2). The role also requires integrity commissions work closely with police, potentially compromising the commission's independence. It is partly for this reason that the New South Wales system gives the ICAC responsibility for dealing with corruption and the New South Wales Crime Commission responsibility for investigating major crime (NSW Crime Commission 2009). In Queensland in the mid-1990s the Borbidge Coalition government put the serious and organised crime function into a new Queensland Crime Commission (QCC), but the Beattie Labor government shut down the QCC in 2001 and put its functions into the CMC. In October 2009 Western Australian CCC Commissioner Len Roberts-Smith warned of the risks of neglecting public sector misconduct in response to a move by the Barnett government to require the Commission focus more on organised crime (Taylor 2009).

8. How Should Oversight Agencies be Held Accountable to Citizens?

The current debate on integrity commissions in Australia has included the question 'who is overseeing the overseers?' In order to perform such a task, a difficult balancing act is required between independence from political interference and accountability to citizens through parliaments. A model for democratic accountability that has emerged from the development of integrity commissions in Australia, and appears to have strong consensus support, is that of a cross-party parliamentary oversight committee (Brown 2006). A parliamentary committee periodically reviews and reports on the oversight agency's performance, and responds to allegations of misconduct against the agency. Increasingly in Australia it has also been shown that it is also essential that such a committee has an executive capacity. This usually takes the form of an office of inspector – 'parliamentary inspector' or 'parliamentary commissioner' – who has many of the agency's own powers to enter property, obtain documents and require answers to questions. Although this issue is part of 'the debate' under review here, like own motion powers it appears to evince a consensus view, including support from the anticorruption commissions (NSW Parliament 2006:54; PCMC 2006:112; Public Sector Standards Commissioner 2010:36).

The Western Australian CCC has also supported the role of the Parliamentary Inspector despite tensions with its former Inspector Malcolm McCusker (JSCCCC 2009:xi-xii). These tensions arose after McCusker bypassed the Committee and tabled five reports in

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parliament that were critical of the CCC's investigations and findings. The CCC Commissioner did not believe that McCusker had legal authority to table the reports and commenced action in the Supreme Court to determine legality. The dispute was settled before the Court made a ruling.

Part C: A Model Commission

The debate about integrity systems generally shows little evidence of cooling down, especially in jurisdictions that lack an anticorruption commission. In these cases the debate has been fueled by widespread distrust of existing arrangements – with an eye to successful exposés of misconduct in jurisdictions with commissions. As noted in the method section, reliable measures of public sector misconduct and integrity are in short supply, but public confidence and stakeholder opinion are important democratic criteria. These factors combined make for a strong case for a powerful integrity agency with comprehensive coverage of the whole public sector, including elected officials. It appears increasingly difficult to argue that the traditional Ombudsman model (supplemented by an Auditor-General) is adequate to address the range of misconduct risks in government, even with additional powers. The creation of a public sector integrity commission allows the other two agencies to focus on their specialist tasks of reviewing administrative complaints and scrutinising government accounts (JSCEC 2009:9) – referring suspected corruption cases to an integrity commission. A properly constituted commission would need to have powers and adopt methods well beyond those of the traditional Ombudsman. It appears that the full battery of royal commission powers and a variety of additional functions are essential to allow these agencies to meet the challenge of hidden corruption. These include the capacity to:

1. Conduct own motion investigations;
2. Require attendance and answers to questions;
3. Hold public hearings;
4. Apply for warrants to search properties and seize evidence;
5. Engage in covert tactics – including listening devices, optical surveillance, undercover agents and targeted integrity tests;
6. Directly investigate the most serious and intermediate matters;
7. Make disciplinary decisions and manage a mediation program;
8. Conduct research and risk reviews aimed at improving procedures and preventing misconduct;
9. Engage in public sector ethics training;
10. Prosecute complainants who are patently vexatious; and
11. Account for its work using a variety of performance measures, including stakeholder satisfaction, prosecution outcomes and case study reports.

These features are core elements of evolving institutional arrangements internationally and in Australia. They can be seen in their most mature form in police integrity agencies – such as the Northern Ireland Police Ombudsman, established 2000, or the Independent Police Complaints Commission for England and Wales, established in 2004 (Prenzler 2009:153–172). But they are also evident in agencies with a wider brief across the public sector, such as the landmark Hong Kong Independent Commission to Combat Corruption, established in 1974 (Scott, Carstairs and Roots 1988).

Powerful integrity commissions must also be held accountable to citizens. Parliamentary oversight provides a vital cross-party mechanism for scrutiny. An inspector attached to the committee can provide a further degree of independence while giving the committee the capacity to investigate complaints and any matters deemed appropriate. In addition, while the bifurcated police/public sector model seems to work well in New South Wales, integration does offer the prospect of a fairer, more efficient, system – so long as the commission includes a dedicated police unit. An additional benefit is that the larger size of an integrated commission should allow it to develop a regional 'shop

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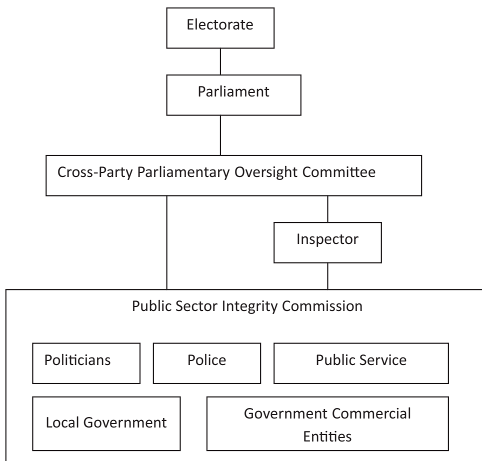
Figure 1. Basic Structure of a Model Public Sector Integrity Commission



Source: Prenzler 2009:171.

front' presence to provide easier access for citizens outside capital cities. Figure 1 outlines the model system of accountability described above that includes police oversight within a comprehensive public sector integrity commission.

Conclusion

The debate in Australia about public sector integrity systems is ongoing, although the trend is in the direction of comprehensive coverage through a powerful integrity commission. The debate has been most vigorous in states without a commission. The South Australia government has been holding out against any review of the issue. In Victoria, the government was staunchly opposed to a commission but acceded to public pressure, allowed a review and then accepted the recommendation for a new commission. Tasmania has also moved decisively in this direction with a new Integrity Commission pending. The debate is more muted in the other jurisdictions but the issues are alive here as well. Given the numerous cases of public sector misconduct and corruption exposed by integrity commissions it is becoming increasingly difficult to argue against their role as essential institutions.

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Reform in Politics, Criminal Justice and the Police in Post-Fitzgerald Queensland

An Assessment

Tim Prenzler[*]

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.[1] 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.[2]

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.[3]

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.[4] The EARC accepted the submissions of the major parties regarding stable government and the value of tradition in favour of single-member electorates.[5] 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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1 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.

2 Fitzgerald (1989), pp 127, 370–71.

3 EARC (1990); Ransley (2001).

4 Mackerras (1992).

5 EARC (1990).

In 2001, Labor won its greatest majority with 74 per cent of the seats in parliament from 49 per cent of votes.[6]

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.[7] 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.[8] 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.[9] 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.[10]

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.'[11] 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',[12] 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

6 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.

7 Australian Broadcasting Corporation, 'Queensland Election 1998: Hot Spots, Key Seats', www.abc.net.au/news/qe98/hotspots.htm.

8 Emerson and Niesche (1997); Reynolds (2000).

9 Williams (2004).

10 Robson (2006a, 2006b).

11 Fitzgerald (1989), p 124.

12 Fitzgerald (1989), p 127.

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secrecy to wheelbarrow loads of material which might be required by Cabinet, even without taking them there'.[13]

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.[14] 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.[15] 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.[16] 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.[17] Gratuities, for example, are normally completely prohibited by public service codes of conduct.[18] 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'.[19] 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

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13 Chamberlin (2009), p 24.

14 CJC (1992).

15 Walker (1992), p 9.

16 Targett (2001).

17 Morley (1997).

18 Prenzler (2009a), pp 17–18.

19 Metcalf (1997), p 3.

with the police.[20] The CJC/CMC has shown scant interest in the topic, producing a guidelines paper[21] 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.[22] The issue of the appointment of elected members' relatives to electoral offices remains unresolved 20 years after the inquiry.[23] Nepotism in the courts was revealed by the *Courier-Mail* in a 2000 report on judges employing their children as associates.[24] 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.[25] The vacancy was not advertised and there was no competition.[26] 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'.[27]

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.[28]

20 Murray (2004), p 21.

21 CMC (2008).

22 Fitzgerald (1989), pp 131, 253–54.

23 For example, Cole (2005).

24 Whittaker (2000).

25 Odgers (2006), p 10.

26 Cf. Fitzgerald (1989), p 131.

27 In Condon (2008), p 28.

28 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.[29] 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.'[30] 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.[31] 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.[32] 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

29 CJC (1996b).

30 In Finnane (2000), p 4.

31 Prenzler (2000).

32 Meryment (1997).

pressure and pre-empted a trial of tasers by announcing a statewide rollout of the guns.[33]

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'.[34] 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.[35] 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.[36] (The Beattie government had earlier failed to implement CMC recommendations to stop deception in local government elections.)[37] It is also the case that there are still no adequate brakes on wasteful government expenditure.[38] 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.[39]

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.[40] 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.[41] The CMC is also unable to exercise jurisdiction over corporatised government entities or outsourced services, such as private prisons.[42] 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

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

34 (1989) p 370.

35 Chamberlin (2009).

36 Chamberlin (2009).

37 CMC (2006); Stolz (2006).

38 Parnell (2003).

39 Wardill (2008).

40 Butler (2000).

41 CMC (2006).

42 Butler (2000), p 5.

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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.[43] 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'.[44] 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.[45]

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.[46] 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.[47] 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.[48] A 2008 review of prisons by the Prisoners' Legal Service and

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43 CMC (2008), pp 25–6, 67, 76.

44 Fitzgerald (1989) p 149.

45 Schloenhardt and Cameron (2009).

46 Hayes and Prenzler (1998).

47 SCRGSP (2009), Tables 8A.9 and 8.11.

48 '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.[49] Queensland has the lowest prisoner employment rate of any Australian jurisdiction and the second lowest rate of education and training of prisoners.[50]

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).[51] 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.[52] A recent study of domestic violence protection orders found a pattern of significant downgrading of assault and other crimes associated with breaches of orders.[53] 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.[54]

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.[55] The prohibition is largely the result of conservative religious influences on the ruling political parties,[56] 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.[57] 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.[58]

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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49 PLS/CPM (2008).

50 SCRGSP (2009), Table 8A.40.

51 SCRGSP (2009), Table 7.9.

52 Burke (2008).

53 Douglas (2008).

54 Weathered (2007).

55 Ransley and Prenzler (2009), p 30.

56 Fraser (2009).

57 Ransley and Prenzler (2009), pp 29–30.

58 Ransley and Prenzler (2009), p 28.

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more than 6,600 are hospitalised.[59] 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.[60] 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.[61] 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[62] and consumer protection.[63]

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.[64] 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,[65] 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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59 SCRGSP (2009), tables 6A.41 and 6A.42.

60 Nielson (2005), p 4.

61 For example, Madigan et al (2009).

62 Briody and Prenzler (1998).

63 Hayes and Prenzler (2003).

64 Fitzgerald (1989), p 375.

65 Fitzgerald (1989), p 372.

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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.[66]

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.[67] 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.[68] 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.[69]

A CJC evaluation of the first five years of reform, published in 1997, indicated a general improvement.[70] 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

66 Fitzgerald (1989), p 200.
67 Prenzler (2009b).
68 CJC (1997); Franklin (2002).
69 Drew and Prenzler (2010).
70 CJC (1997).

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years after the full establishment of the new system.[71] 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.[72]

The 1997 report on reform identified the police weakening of CJC disciplinary recommendations as a significant problem.[73] 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.[74] 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'.[75] Overall, very little use has been made of tribunals as envisaged by Fitzgerald[76] — typically, only about five matters were finalised in this forum per year.[77] This is partly because tribunals involved unacceptable delays and took an 'excessively legalistic' approach, resulting in an unexpected number of dismissals.[78] 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.[79] But the CMC has consistently relied on a large posse of about 100 seconded police to conduct its investigations, with limited supervision by lawyers.[80] In effect, the old system of police investigating police predominates, with the presumption — supported by limited evidence — that

71 CJC (1997), pp 60–62.
72 For example, Viellaris (2009), p 1.
73 CJC (1997).
74 Fitzgerald (1989), p 386.
75 CJC (1997), p 67.
76 Fitzgerald (1989), pp 315–16.
77 Prenzler (2000), p 666.
78 CJC (1996a), p 3.15.
79 Fitzgerald (1989), p 313.
80 Prenzler (2000).

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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'.[81] Despite this judgment, the transformation of the CJC into the CMC saw a further shift in complaints-handling back to police.[82]

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).[83] Journalist Phil Dickie — whose investigations led to the Fitzgerald Inquiry — described the CJC as 'a useful repository for burying complaints'.[84]

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.[85] 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.[86] 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

81 CJC (1996a), p 3.21.

82 CMC (2004).

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

84 *Good Weekend*, 12 August 1995, p 26.

85 CMC (2009a).

86 CJC (1994a).

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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.'[87] 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.[88] 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.[89] In a subsequent disciplinary hearing, the Deputy Police Commissioner dismissed three

87 CJC (1994a), p 29.

88 Johnston (1991).

89 Eades (2008).

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of the officers and demoted three others, as well as their supervisor. The sentences were then suspended, effectively absolving all the officers involved.[90]

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.[91] 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 office, 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[92] — both evidencing failings by police management and the CMC.

South Bank Tasering 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.[93]

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

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90 Prenzler (2000), pp 669–70.

91 Waters (2008).

92 Office of the State Coroner (2006).

93 Wray and Chudleigh (2009).

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teeth were broken. According to the *Sunday Mail*,[94] 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.[95] 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,[96] 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'.[97] 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.[98] But in 1996, six assistant commissioners marched on Minister Cooper's office to protest any moves to advertise their positions.[99] 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.[100]

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',[101] 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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94 Weston (2009).

95 Fitzgerald (1989), pp 381–82.

96 CJC (1994b).

97 Fitzgerald (1989), p 278.

98 *Courier-Mail*, 3 September 1996, p 1.

99 *Courier-Mail*, 3 September 1996, p 4.

100 Bingham (1996).

101 Fitzgerald (1989), p 381.

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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.[102] 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.[103]

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.[104] 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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102 CJC (1994b).

103 Fitzgerald (1989), pp 290, 293.

104 Prenzler (2009b), Chapter 10.

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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.[105] 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 equivocatory 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.[106]

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105 Grabosky (1989), p 303.

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