

Queensland Legislative Assembly
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By Leave

Crime & Misconduct & OLAB 2014
Submission 004

Crime and Misconduct and Other Legislation Amendment Bill 2014.

SUBMISSION
to the Legal Affairs and Community Safety Committee

1. Although I'm retired and would prefer to use my time differently, I'm responding to the Legal Affairs and Community Safety Committee's invitation to provide a written submission regarding the Crime and Misconduct and Other Legislation Amendment Bill 2014.
2. According to Parliament's website, parliamentary committees "provide greater accountability", "enhance the democratic process" and "have made a positive and beneficial impact on the Parliament and the process of Government in Queensland since the re-invigoration of the committee system during the late 1980s and 1990s." However, a government can limit a committee's ability to "enhance the democratic process" or even use a committee to help mislead the electorate. Using its parliamentary majority, the Liberal National Party has appointed five of its members to this seven person committee and, as all members of the committee are doubtless aware, it recently sacked and re-stacked another committee which attempted to "enhance the democratic process" and then fabricated a reason for doing so. The circumstances aren't encouraging but, given the public turmoil in Queensland, particularly in relation to criminal justice, I can't leave open the possibility that it might be incorrectly suggested that I don't object to the Bill.
3. The Liberal National Party's present huge parliamentary majority makes effective, independent oversight of public administration more, not less, essential. Democracies need to control the human frailties of those in power in order to protect the rights and well-being of others. Consistently with those realities, most modern democracies outside Australia share common checks and balances; formal constitutional protection of fundamental human rights such as freedom of conscience and expression; a division of power between separate legislative, executive and judicial "branches" of government which complement and control each other; and the allocation of power within the legislative branch to separate houses which must function jointly. Queensland uniquely lacks both constitutional protection for individual rights and a second house of parliament and, as history confirms, is particularly vulnerable to political excess. It was only in the late 1980s that the State

began to emerge from a lengthy period of open political contempt for the fundamentals of democracy and basic ethics, the systematic misuse of parliamentary power and corruption.

4. Following a Commission of Inquiry which exposed some of the criminals in the National Party and the Police Force, reforms were introduced during the late 1980s and 1990s. One important reform recommended by the Inquiry was the establishment of the Criminal Justice Commission (now the Crime and Misconduct Commission).

5. The Commission was established to continue the work of the Inquiry and, in doing so, prevent crooked politicians and police again running the State. Although it has not always functioned smoothly, the Commission is a constant reminder to all public officials that misconduct risks exposure and punishment and it has, until now, acted as a reasonably effective brake on the misuse of power and curtailed criminal activities. However, the nature of its work is such that it is never far from controversy. It is resented by all political parties, each of whom has taken steps to dilute its effectiveness when in power, and hated by politicians whose improper activities it obstructs or exposes. To some, it symbolises the loss of an era in which the power and influence of their party and its adherents were effectively beyond challenge. Both major political parties blame the Commission's imaginary bias when it exposes misconduct involving one of that party's members or exonerates an opposition member. Its workload and exposure to controversy are significantly increased by politicians making allegations against each other for political advantage, sometimes without any substantial basis. Like all organisations which has a significant workload of difficult work, it makes mistakes. However, its mistakes do not explain the irrational vendetta which has continued for a quarter of a century.

6. Soon after Mike Ahern, the Premier when the Inquiry reported in 1989, undertook to implement the reforms which it had recommended, the National Party replaced him with a committed opponent of reform, Russell Cooper, who a couple of months later led the party to its first electoral defeat in a generation.

7. The National and Liberal Parties (in coalition) next gained power when a government in which Robert Borbidge was Premier and Cooper was Police Minister was elected in 1996. The Borbidge Government quickly demonstrated that the coalition parties had learned nothing from their previous experience.

8(a) The Labor Party initially appeared to have won the election held in 1995 but the Court of Disputed Returns controversially ordered a by-election in the seat of Mundingburra, one of the seats which the Labor Party had won. The entire election depended on the outcome of that by-election, which was won by a National Party-Liberal Party coalition with the support of the Queensland Police Union. It later emerged that Borbidge and Cooper had signed a secret Memorandum of Understanding with the Police Union, which donated A\$20,000 to the National Party's campaign and received in return a series of disgraceful commitments improperly allowing it to meddle in police administration, including a right of veto on the selection of the Police Commissioner. The document also identified six Assistant Commissioners whom the Police Union considered should be dismissed. A summary of the Memorandum of Understanding appears at pp116-118 of "Encouraging Ethics and Challenging Corruption", by Noel Preston, Professor Charles Sampford and Carmel Connors.

(b) When the Memorandum of Understanding eventually became public, the Commission engaged a retired New South Wales judge, the Honourable Kenneth Carruthers, to conduct an independent inquiry. When evidence before that inquiry was damaging to the Borbidge Government, especially Cooper, it responded with an outrageous attack on both the Commission and Carruthers personally. The linch-pin of its attack was the so-called "Connolly-Ryan Inquiry". Connolly and Ryan were both retired judges. Connolly was senior to Ryan and a much more dominant personality. As one of his former judicial colleagues, Justice J B Thomas, subsequently held, he was also biased. He had served as a Liberal Member of Parliament before he became a judge and had even provided a legal opinion supporting Cooper which had been tendered to the Carruthers Inquiry. He was later quoted in evidence as saying: "Now that our side of politics is back in power we can do a proper critique of the Fitzgerald experiment."

(c) Carruthers resigned under pressure from Connolly without writing a report and two barristers appointed by the Commission to finish the task recommended against charging Borbidge or Cooper with electoral bribery but that senior officials of the police union should face disciplinary action for improper conduct.

(d) The Connolly-Ryan Inquiry continued until it was stopped by the Supreme Court because of Connolly's bias: *Re Carruthers v Connolly, Ryan & A-G.* [1997] QSC 132 (5 August 1997).

(e) Parliament passed a vote of no confidence vote in the Attorney-General, who refused to resign and was supported by Borbidge.

(f) The Borbidge Government continued to pursue the Commission. In late 1997, it introduced amendments to the Criminal Justice Act and a new Crime Commission Act. The Commission was subjected to supervision by a Criminal Justice Commissioner appointed by the Government and both the Commission and the Crime Commission were made responsible to a Government Minister instead of Parliament.

(g) The Bill before this Committee takes the final step needed to remove the Commission's independence entirely and bring it completely under government control.

8. The Borbidge Government was voted out of office in the 1998 election, in which its primary vote went down by almost 18 per cent and it lost 11 seats, and the Liberal National Party next gained government on 26 March 2012. It soon turned its attention to the Commission. In October that year, the Government announced the appointment of the Honourable Ian Callinan, AC, QC., assisted by an academic from the University of Queensland, to review the Crime and Misconduct Act. Callinan had ably represented the National Party Government during the Inquiry which led to the establishment of the Commission.

9. When the Inquiry was established in 1987, the National Party Attorney-General was advised and influenced by a small ambitious group of Justice Department bureaucrats. The Attorney-General appointed one, John Sosso, as Secretary to the Inquiry. Sosso didn't last long in that role but returned to the Justice Department which, as the Inquiry's report notes, did little willingly to assist the Inquiry. Later, when Borbidge was Premier, Sosso was Deputy Director General of the Premier's Department. He is now the Director General of the Department of Justice.

10. In contrast to Sosso, neither of the Bill's principal public proponents, the Premier, Campbell Newman and the Attorney-General, Jarrod Bleijie, experienced life in Queensland when criminal politicians and crooked police ran the State. Newman did not arrive in Queensland until 1993. Bleijie, who was born in 1982, was a child in his early primary school years when the Inquiry reported in 1989. It seems unlikely that he followed its revelations between the ages of 5 and 8.

11. Despite what politicians promise, there are no simple solutions to

complex problems and neither Newman nor Bleijie (nor for that matter Sosso) has knowledge or experience of the complexities involved in balancing personal freedom and public safety through criminal justice. Newman and Bleijie's conduct also suggests that they are unaware of, or unconcerned by, the principles and responsibilities of good governance and intolerant of dissent and decision-makers whom they can't control. Both seem to inhabit a political universe which is divided into "us" and "them", in which those who do not agree with their views or do what they demand are for that reason enemies and legitimate targets for abuse and government retribution. In their brief time in office, they have embarked on unprincipled attacks on courts and the judiciary, which, by virtue of their independence and authority, are obstacles to political excess, and enacted radical, profoundly mistaken laws which were not mentioned prior to the last election, including laws aimed at subordinating the criminal justice system to political interference and a flurry of extreme "law-and-order" legislation.

12. Extraordinarily, those attacked by Bleijie include one of Queensland's most respected judges, the President of the Court of Appeal, Justice Margaret McMurdo, a woman of absolute integrity who has served Queensland as a judge with great distinction for more than 20 years. In one sense, she was an obvious target. It was the Court of Appeal over which she presides which held that Bleijie's madcap scheme to give himself power to over-rule a court's decision that a prisoner be released was invalid. Bleijie's bizarre response includes a proposal for a new appeal court gives some indication of how far the Justice Department is out of control. It is appalling that a junior solicitor appointed to a position which is unsurprisingly far beyond his competence and experience has betrayed her Honour's confidence and defamed her. His hubris is breathtaking. Incomprehensibly for those unfamiliar with Queensland politics, Bleijie is supported by Newman. Justice Margaret McMurdo, the most senior judge on the Supreme Court after the retiring Chief Justice, will certainly be passed over when the next Chief Justice is appointed. Similarly, the highly regarded former Solicitor-General, Walter Sofronoff QC, who recently resigned and described Bleijie as untrustworthy, is unlikely to be offered an appointment to the proposed new Bleijie appeal court (or any judicial appointment) in the near future.

14. The Bill before this Committee meshes neatly with the Government's "law and order" propaganda and the Liberal National Party antipathy towards the Inquiry reforms. It is unnecessary to discuss the Callinan report, which has been overtaken by the Bill, or even the Bill in detail. I have scanned the Callinan report's Executive Summary to satisfy myself

that, as I expected, Callinan did not recommend the government's outrageous proposal in the Bill that it and it alone decide on senior appointments to the Commission irrespective of the views of the Opposition or advice of the Parliamentary Crime and Misconduct Committee. The Government has already appointed an unsuitable Acting Commission Chairman and, in order to protect him from investigation, dismissed members of the parliamentary committee which was inquiring into his inappropriate conduct and appointed other committee members whom it presumably considers to be more compliant. If the Bill is enacted in its present form, partisan appointments will follow and Liberal National Party politicians will not have to worry about their conduct while opposition politicians will be at constant risk, just as they were in the pre-Inquiry days when they were forced to defend government-funded defamation proceedings brought for the personal benefit of National and Liberal Party politicians. The Commission will be available for use as a political weapon.

15. There are other troubling signs that the Liberal National Party's huge majority has re-enlivened old, bad habits. For example, in an unfortunate reminder of the gerrymander which gave the Liberal National Party an unfair advantage in pre-Inquiry Queensland, the Government is proposing to change the current electoral laws. The Government's majority must be respected but it does not have a mandate to obliterate reforms which were necessitated by the Liberal National Party's predecessors' criminality and abuse of power or to return Queensland governance and public administration to their parlous state in the 1980s. Sooner or later, the Premier will have to bring the Justice Department under control or risk public humiliation. This Committee's advice to Parliament that the Bill in its present form is a gross abuse of power would provide a good start.

G E Fitzgerald

27/3/2014