

The Search for Virtue and the Role of Anti-corruption Agencies : A Queensland Case Study

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PROLOGUE

At the 2001 PAC Conference at Sunningdale, Peter Barberis provided the following abstract to his paper on civil society, virtue and trust:

“Laments about the decline of public morality and the public service ethos have found expression across the political spectrum. The age of modernity (or post-modernism) makes more difficult, though not impossible, the maintenance of a civil society in which ‘virtue’ and ‘trust’ feed the public service ethos....Governments have, among other things, applied indiscriminately the ‘heavy’ regulatory regimes to deal with impropriety, in the process stifling the public service ethos.”

This paper, also given at the PAC conference, has been recast in the light of the Barberis comments. It deals in particular with the ambiguous role played by one “heavy regulatory regime” and the complex relationships developed between this anti-corruption agency, the various governments in power after its creation and (only incidentally) with the modernisation of the police service in Queensland.

The story of the modernisation of the Queensland police service is a remarkable one, involving as it does the disgrace and imprisonment of Police Commissioner Terry Lewis and – on unrelated corruption charges – several Ministers. This was linked to the disgrace of a Premier of one government linked to both events, whose party subsequently plunged to electoral defeat in 1989 after thirty years in office.

More recently (February, 2001), Queensland has seen the resignation of a Deputy Premier and several Ministers of the opposing party after admitting electoral roting associated with fraud and perjury. Apparently paradoxically, the party then went immediately to an election where it won a victory of unprecedented proportions.

The common feature has been the impact of a judicial enquiry between 1987 and 1989 and the activities generated by the supervisory body created by that enquiry, the Criminal Justice Commission (CJC). This paper is in two parts – the first deals with the political context and administrative changes over the past decade and the

second focuses specifically on the operation of the Criminal Justice Commission within that context and its role in promoting modernisation of the police force.

The stimulus to the initial enquiry, colloquially known as the Fitzgerald enquiry, was a series of newspaper and television revelations. The producer of the key 1987 programme has remained an interested observer of Queensland events.

"It is easy to forget how crook it was. A few spivs were running the police force in a de facto way from Brisbane's Fortitude Valley (a sleazy inner suburb). One is now doing life for heroin trafficking. I came to the story because of a cri de coeur from a decent policeman who was being press-ganged into a career with the other side. He did not want to be corrupted... There are complaints from Queensland that the police force is still a troubled one. One official came up with the quote of the century: 'Terry Lewis might have been a crook but at least he knew how to run a police force.' "

Add as footnote

**(Chris Masters, "Corruption and Reporting Corruption in Australia",
CBPA, no 68, March 1992)**

THE POLITICS OF ADMINISTRATIVE MODERNISATION

1. Policing and the Political Culture of Queensland

The bulk of political and economic power in Australia is located in the triangle linking Sydney, Melbourne and Canberra. Queensland and the relatively empty Northern Territory are more outward focussed towards Australia's northern neighbours. Darwin, for example, is much further away from Canberra or Brisbane than it is from Indonesia and particularly from East Timor where Australian military and police are actively engaged. Queensland shares a very narrow and permeable sea border with Papua New Guinea, connected by a chain of islands it administers in the Torres Strait.

Queenslanders have a strong sense of sub-state regional identity but as a whole they join with particular fervour in the national antipathy towards the federal capital and all who live there in splendid isolation from "the real world". It is a state which has always been a bastion of conservatism of whatever nominal partisan label is applied (including the Australian Labor Party). Two decades ago there was a body of literature which addressed the question of whether Queenslanders are significantly different from the inhabitants of other States¹. This focused on issues such as the effect of the decentralisation of the State, rural fundamentalism, lower standards of education and a history of authoritarian governments

The key characteristics relevant to policing in Queensland include the physical and social geography as well as this political culture. It is easy even in Brisbane to lose the sense of perspective associated with the size and diversity of a state which has always seen itself and been considered by others as a "maverick". The Queensland Police Service comprises over 11,000 staff, of whom 7000 are police officers. To give an image for a British audience of the geographical scale of the operation of the single police authority based in Brisbane, consider the following: If Sunningdale was Brisbane, the police headquarters in Berkshire would have its northern regional headquarters in the Orkneys and its most distant stations within that region in both Iceland and Poland.

The police and public bureaucracies operate in a political environment and it is necessary to trace the development of relationships between the political system and the public service over the past decade in order to understand the specific aspects of the operation of the anti-corruption agency known as the Criminal Justice Commission. (CJC).

¹ See, for example, Charlton, P, *State of Mind: Why Queensland's Different*, Methuen Haynes, 1983.

2. Public Sector Management under the Bjelke-Petersen Regime

The politics of Queensland were dominated in the 1970's and 1980's by the presence of a Premier who adopted an authoritarian, ultra-conservative style which appealed to the rural electorate. The Country Party later changed its name to the National Party, both nationally and in each state, in an attempt to broaden its electoral appeal beyond a shrinking rural base, but its new title has made little difference in the long run to its core support in Queensland. Premier Joh Bjelke-Petersen initially headed a Coalition (with the city-based Liberal Party) but later was able to build on his anti-Canberra ideology and business-oriented public policies to govern in his own right.

Halligan and Power have argued that during this era Queensland administrations had assumed many of the characteristics of what they termed the 'bureaucratist' type of government:

A government was in power that was sensitive to the interests of subordinate staff, developed structures and cultures that reinforced this relationship and relied on the political support of employees to remain in office.²

3. The collapse of the Bjelke-Petersen regime

The government held its credibility with the rural sector in part through its highly moralistic stance on issues such as abortion, censorship and authoritarian crackdowns on dissent. In the second half of the 1980s Bjelke-Petersen became preoccupied by a desire to move to federal politics, effectively leaving the Deputy Premier, Bill Gunn, in control in Queensland in his absence. Following the claims of police corruption in the State mentioned above, Gunn established, in 1987, a Commission of Inquiry into Possible Illegal Activities and Associated Misconduct (afterwards known as the Fitzgerald Inquiry). The Fitzgerald Inquiry detected corruption deep within the government as well as the police force. Its findings resulted in the jailing of the police commissioner and two ministers, the disgrace of Bjelke-Petersen, and a sweeping agenda for change designed to prevent the recurrence of such institutionalised corruption.

The National Party's evident exhaustion and lack of inspiration had resulted in progress by the Labor Party at an earlier election; the scandals gave them an easy opportunity to seize power, with every hope of entrenching their position. There had been a considerable demographic change over the years, especially as the south-east corner had become a magnet for inward migration from other States and there was an increasing population drift from the bush to the city. This might have been expected to change voting patterns even without the corruption scandal and the ALP's own change of leadership which had emphasised its commitment to

² Halligan, J, and Power, J, *Political Management in the 1990s*, Oxford University Press, Melbourne, 1992, p 165.

modernisation, but the Fitzgerald Report made it inevitable.

4. Public Sector Management under Goss : Changing the People

The Labor Party's relatively young leader, Wayne Goss, took office in the aftermath of the corruption scandal, with the general expectation that the government would establish proper processes designed to ensure democratic accountability within the State. The Fitzgerald Report had examined the administrative processes of the State and made a number of recommendations in relation to them. One of the most significant was the establishment of a Criminal Justice Commission (CJC), originally intended to have a limited-term existence. The CJC was given extensive powers in relation to both the Police Service and more general official misconduct, including that of ministers and other politicians.³

The reforms proceeded under Labor with the establishment of a number of new processes including an Electoral and Administrative Reform Commission, a more coherent parliamentary committee system, improved Cabinet processes designed to secure accountability and wider debate and a program of legislative reform.

The Report had also commented:

It is undesirable to leave reform to those people who are steeped in the previous philosophies and policies and who would no doubt find it difficult to willingly and cooperatively adopt an objective approach to the issue of reform.⁴

As part of this process the Labor Party brought into the public service a number of academics with backgrounds in government and public administration, since the Party was suspicious of the capacity and motivation of existing senior officers appointed under the long-serving previous regime. (The present author moved from being a Vice-Chancellor to serve as Director-General of Education).

Goss used these people to carry through a significant agenda of reform but he failed to keep in touch with the party's grass roots support, especially among modernising elements within the public service. This flaw eventually proved fatal to his own leadership. He surrounded himself in central agencies and on Ministerial staff with inexperienced partisan advisers who shared his scepticism about the capacities of the public service. Many who started off as advisers were entrenched in senior roles within the service itself. It seemed to those within the system that the new government was treating its public service as an enemy, rather than recognising the goodwill that most within the public service initially had towards the new administration.

³ The CJC is discussed later in this paper, in particular its stormy relationship with successive governments.

⁴ Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, *Report*, Brisbane, 1989.

5. The Managerialist Agenda : Changing the Structure

There was however a more positive side to the change of regime, a desire to modernise and create a new climate within the bureaucracy which rewarded merit and achievement. Goss came to government with a commitment to introduce a more efficient administration (if need be, at the expense of a social policy agenda more central to the party's formal commitment to a socialist ideology).

A Public Sector Management Commission (PSMC) was established. It set public sector standards in relation to areas such as equal employment opportunity and merit selection. One effect of the equity agenda was to generate friction with senior departmental officers by restricting their autonomy in personnel selection matters through the imposition of accountability standards and requirements for central agency representation on selection committees. These changes had the effect of weakening the traditional role of seniority in appointments and incidentally opening up opportunities for women applicants. This affronted many male public servants, teachers and police officers, who saw their career prospects being diminished by new competitors.

The activities of the Review Division were even more controversial. Every department was subjected to a searching review dominated by central agency agendas. The process tended to feed a growing sense of alienation in the public service, a public service which on the whole had welcomed the change of government but then found itself destabilised and increasingly demoralised by the process of restructuring that usually followed these reviews.

6. The Electoral Backlash against Goss

The electoral cycle is abnormally short in Queensland, with a maximum parliamentary term of three years. When the Goss government went to the polls for the second time since its ascent to power, its fortunes were waning and it came perilously close to defeat. The election held on 15 July 1995 defied widespread expectations that Labor would be returned comfortably. Goss was returned with a single seat majority having been returned comfortably in 1992.

The backlash against the government was partly a result of disappointed interest groups that had expected a more responsive social policy agenda, such as the Greens. The press was alienated by the Goss campaign which was too stage-managed and aloof. But the loss of public service goodwill also had a considerable amount to do with the strong protest vote.

There followed a period of high volatility in the political process, which will not be described in detail as it related essentially to issues beyond the bureaucracy. The single seat majority was overturned as a result of a challenge in the electoral court which forced a by-election. The by-election was distinguished by remarkably inept behaviour by the Labor machine: it decided it needed a more attractive candidate to be sure of winning and dumped the incumbent (who was a former Minister). In

the absence of a suitable sinecure, he then displayed his vindictiveness by standing as an independent and splitting the Labor vote.

The Mundingburra by-election was a hard fought, dirty campaign, during which the seeds of later troubles for the about-to-be Coalition government were sown. In particular a Memorandum of Understanding was signed by three key members of the future Coalition government, the future Premier, Treasurer and Police Minister and the Police Union. As is discussed in detail later, the MOU gave undertakings that included dismissal of the Commissioner and several members of his senior management team. When Labor lost the by-election, the balance of power passed into the hands of a single independent whose conservative policy preferences led her to support the restoration of a conservative coalition led by Rob Borbidge.

7. The Public Service under Borbidge

The new government sought to establish a working relationship with a public service which had helped secure its election, albeit with an unstable and wafer-thin majority. Coalition leaders knew that they had a relatively brief period to win an aura of competence with the voting public which had thrust them into office almost as an unintended consequence of wishing to punish the Goss government's perceived arrogance.

Two forces intervened despite Borbidge's best intentions. First there was a commitment on the part of the urban elements in the coalition to the sort of privatisation reforms commonly listed on the agenda of the New Public Management. Second, there was an expectation that the spoils should go to the victors and those senior officials dismissed under Goss were rehabilitated. The wheel had turned full circle, with the new government reaching deep into the bowels of the bureaucracy to punish or reward its opponents and supporters. There was no sense of apology and no justification needed, since it was asserted that this merely replicated the behaviour of Labor. It felt like the return of the Bourbons and Borbidge lasted an equally short time.

The perception that Borbidge's government was running for cover, particularly over the MOU with the Police Union, became just one of a number of issues which helped undermine Borbidge's narrow hold on power. The impact of other political issues, not central to this theme, created an environment of growing dissatisfaction and also tension between the coalition partners.

In 1998, the Coalition's already reduced mandate to govern was tested in an election campaign distinguished by a lack of serious issues and an emphasis on the personalities of the two leadership teams. The result was a narrow but at least ultimately decisive win for Labor under Peter Beattie, who had displaced Goss after the latter's defeat.

8. Public Service Life After Borbidge – Continuity or Change?

Beattie came to power in 1998, at first dependent like Borbidge before him, on the vote of a single (but different) independent. Beattie pursued a similar policy of wholesale changes in departmental heads, removing almost all of the Borbidge appointees immediately; only four (out of 18) CEO's who had served under both Goss and Borbidge survived the successive changes of regime. Indeed cynics argued that some of Beattie's appointments owed their posts not to merit, but entirely to the fact that they had been dismissed by Borbidge. Others suggested that merit itself had been redefined in terms of partisan identification. This upheaval, which had been heavily criticised when generated by Goss and Borbidge, passed with remarkably little public criticism.

It now appears that there is universal and bi-partisan acceptance of the proposition that a new Minister is entitled to choose his or her CEO, irrespective of whether or not there is a current incumbent and on the basis of applying widely differing measures of merit. The only public disputation in Queensland has been about whether the length of the contractual period should be fixed or related to the tenure in office of a particular government. Opinion has now shifted to a unanimous view that contract periods should only be for three years, effectively the maximum life of a single government.

9. Beattie's Strategy for a Landslide – Disown Your Party

The spectre of Mundingburra in Townsville came back to haunt the Labor Party when factional infighting for endorsement to fight that seat spilled over into a conviction for fraud against party activists. In order to solve other forms of "rotting" the endorsement plebiscite process, the Labor Party, unlike the opposition parties, had required evidence of presence on the local electoral roll before granting voting rights to members.

It emerged that party activists indulged in shady practices during 1996 involving false addresses and fraudulently registered memberships on the electoral roll. Enough evidence came to light to require police action and ultimately a conviction of a young candidate who then tipped a very public bucket on the practices of the entire party and specifically of some of its most prominent members.

Throughout 2000, the escalating range of accusations led Beattie to invite the CJC to conduct its own investigations in order to reassure the public and allow him to "root out all the grubs". The CJC chose to "contract out" the task to a judge, Justice Shepperson, and his protracted investigations, public hearings and preliminary findings produced a surge of publicity equal to the highest dramas of Fitzgerald or the Police MOU. The outcome this time was startlingly different from those events.

Beattie seized the initiative and forced a rigorous purge of ministers, MP's and candidates whose claims to endorsement were tainted by their past behaviour and then called an election slightly earlier than was necessary. He went into the campaign perceived to be taking a large gamble that he personally would be dissociated by the voters from the "grubs" within his own organisation.

. The opposition parties were in total disarray because the Nationals were aware from earlier elections that their heartland support was under threat from the further Right, the xenophobic, racist and protectionist ideology of Hansen's One Nation. This party had proved a shambles in terms of the parliamentary processes but enjoyed support perceived to be growing in rural areas.

The Nationals moved to an accommodation and dragged their coalition partners along, much to the detriment of the Liberals who were wholly forsaken by urban middle class voters embarrassed by the rural red-necks. In the last week of the campaign, self-preservation instincts led Nationals collectively to disown their own leader and try to win over wavering support from rural element leaning towards One Nation.

Beattie romped home in a landslide, winning 65 of the 87 seats; the National Party was reduced to only 11 members of parliament and the Liberal Party to three, equal in number to One Nation and to the independents. A CJC inquiry on this occasion had collected a lot of prominent scalps but the Chief had emerged all-powerful, with a large increase in the tribe of loyal Indians.

THE EVOLVING RELATIONSHIP BETWEEN THE CJC, THE GOVERNMENT AND THE POLICE

1. The Police Service Under Goss

The Fitzgerald Report had identified an unhealthy close relationship between the then Premier and the Police. After Fitzgerald, a greater effort was made to secure bipartisan support for the appointment of seasoned professionals as Commissioners. The first of these was appointed from outside Queensland. His short reign was plagued by his failure to adjust to an untrusting environment and he was ensnared in another CJC investigation relating to misuse of his travel entitlements. His replacement, a local who had served as an investigator with Fitzgerald proved a timely replacement and a long-term success but it was still a poor start to the tricky relationship between Police and the CJC.

Despite this, the Queensland Police Service was fundamentally changed after the Fitzgerald Report. The Labor government significantly increased the level of resources allocated to the police portfolio. The increased resources were directed principally towards rapidly rising police numbers, and providing the infrastructure to support them. Indeed, increasing the number of police in Queensland became the political mantra in Queensland throughout the 1990s. The entry standards for recruits rose rapidly and the content of the Police Service's education and training programs reflected the new emphasis on ethics.

In 1993, the Police Service was reviewed by the Public Sector Management Commission, which focussed on its administration and administrative structures. It was a difficult period for the Police Service. Police cultures are notoriously resistant to change. Many officers who had been comfortable under the old administration were resistant to the reforms taking place. The older officers found themselves supervising young officers who more likely to question the assumptions of their seniors.

By the end of the 1990s, the image of the Police Service was sufficiently attractive for it to be able to fill all vacancies from graduates (although for reasons of social and age mix, this never happened in practice). Physical entry requirements were varied, and specific advertising conducted, to encourage women to join. By the end of the decade, a year's intake approached the goal of a 50:50 gender balance. The promotion process was linked to a merit system in which advancement related to achievements in a systematic preservice and inservice training programme, including the option of further tertiary study.

The entrenched culture may have persisted in the middle ranks, particularly amongst those who believed their career expectations had been significantly reduced. Nevertheless there had been a dramatic shift in the ethical climate within which the Police Service went about its business. In particular, the external thrust of the CJC's oversight of claims of misconduct was paralleled internally by the

creation of an Ethical Standards Command with significant powers and direct access to the Commissioner.

2. The Goss Government and the Criminal Justice Commission.

The CJC was established as an independent statutory body which is accountable to a bi-partisan parliamentary committee. It is empowered by the 1989 Act to investigate alleged improper behavior by police officers, state and local politicians, state government employees and officers employed in state-run correctional facilities; to oversee criminal intelligence matters and managing criminal intelligence with relation to major crime and organized crime; and monitor and to initiate reform of the Police Service and of the administration of criminal justice generally.

In the case of police, the CJC's jurisdiction allows it to take direct initiatives rather than relying on complaints. 'Misconduct' is interpreted very broadly, so that it covers a wide range of improper behavior which is not necessarily illegal; as a result, the CJC has attracted a large volume of complaints from members of the public.

During the 1990s, the relationships of successive Premiers and Police Ministers with the Chair of the CJC were often strained. The pattern was shaped partly by the personalities of the various Police Commissioners but even more by the diverse approaches and attitudes taken by successive Chairmen of the CJC.

The first and most influential CJC Chair, appointed by the outgoing conservative government, was Max Sir Bingham. Bingham had a distinguished career as a legal academic and then magistrate before entering politics and rising to be Attorney-General and Deputy Premier in a Tasmanian Liberal Government. The CJC became a new vehicle for his forceful leadership, providing as it did for a higher degree of power and autonomy than most ministerial or judicial positions.

Bingham's efforts to expand the influence of the CJC and its somewhat draconian pursuit of accusations of misconduct against a wide variety of public servants, as well as police, created widespread but generally covert concern. There were several public occasions when leading politicians and some senior bureaucrats complained about the unrestrained approach of the CJC in its investigations of complaints about official misconduct.

But the aura of sanctity and invincibility derived from the folk memory of the Fitzgerald revelations prevented any direct confrontation. Within the Police Service there was a determination to set the service's own house in order and to concentrate on ensuring standards of conduct did not give cause for concern by the CJC or the wider public.

When Bingham's term came to an end, he was replaced by a local who also had both judicial and academic experience. Rob O'Regan came to the post with a reputation for sensitivity to human rights issues, but he and his successors had to operate within an organisational culture which had developed its own strong

characteristics. Some of the entrenched members of the CJC saw themselves as white knights fighting the evils and inefficiencies of both politicians and bureaucrats.

3. Borbidge, the MOU and the War Between the Enquiries.

A major turning point in relationships between the Criminal Justice Commission, the Police Service and the Government of the day came with the accession to power of the Borbidge coalition government in January 1996.

The trigger of this attack was a decision by the CJC to begin an inquiry into the secret Memorandum of Understanding between the Coalition and the Police Union which, inter alia, sought to reverse all the previous personnel reforms and required the party leaders to agreed to the sacking of a number of police officers from the senior executive, including the Commissioner. As an apparent quid pro quo the Union funded a campaign against the Labor Party in Mundingburra, attacking their Law and Order platform and claiming the Service had been under-resourced under Labor.

One well-placed commentator and former senior bureaucrat under Goss pointed out the consequences for the modernisation process:

Put into practice, the clauses of the Memorandum would restrict interstate recruitment, provide preference for country recruits without tertiary qualifications, impose progression by seniority rather than merit, abolish competency tests and performance appraisal, slow up promotion for recent recruits and, most famously, sack senior officers unacceptable to the union. This unhappy document argues for a police service and, by extension, a public sector that is insular, hostile to merit and graduates, seniority-based, stable and secure, with close working relationships between unions and ministers, and political vetting of senior appointments. It is a vision which returns to the worst practices of the past.⁵

The CJC investigation of the MOU allowed for the possibility that the Ministers and other politicians involved could have been guilty of misconduct, and this, in turn, was interpreted by them as a 'witch hunt' against those party to its signing. To undermine the investigation, the government responded by setting up its own enquiry into the CJC. The majority of the work of this latter inquiry was directed to examining past CJC investigations, mostly with some political flavour either because of the identity of the parties involved or the political nature of the complaint.

This inquiry effectively interfered with the operation of the other, leading to the resignation of the Chairman of the MOU inquiry. Two days after his resignation, the CJC initiated a report based on the evidence collected by the MOU Inquiry. The report by two barristers found that there was no evidence to support criminal

⁵ G.Davis, "The Great Wheel - Public Sector Futures in Canberra and Brisbane", *Canberra Bulletin of Public Administration*, 84, May 1997, p 62.

charges of electoral bribery against the politicians involved. The CJC later issued a report in December 1996 clearing all those involved.

Meanwhile, the second inquiry was also closed down. In this case, it was closed down by a Supreme Court decision in response to a CJC action making accusations about the bias of the one of the two commissioners, arising from his partisan public comments.

The senior management of the Police Service also came under the scrutiny of the Borbidge Government. In seeking to promote at least part of the agenda agreed with the police union, to roll back the Fitzgerald reforms and replacing senior officers, the government resuscitated the initial CJC Commissioner, Max Bingham, and offered a wide-ranging terms of reference as well as a broadly representative committee of outsiders. It was expected that its recommendations would point to the need for major further changes, inferentially upholding the complaints of the Police Union. While the Bingham Report delivered on generalities, it failed to find sufficient shortcomings warranting any attempt to undermine either the Goss era reforms or the senior staff who had implemented them.

4. A Parliamentary Watchdog to watch the CJC Watchdog watch the Police.

The Borbidge Government was initially more successful in its attempts to clip the wings of the CJC, which it regarded as getting beyond democratic control as a result of its powers to have a direct impact on the political process.

The CJC's independence was curtailed by providing increased powers to the Parliamentary Criminal Justice Committee, particularly the power to veto the selection of qualified legal practitioners to conduct hearings on behalf of the CJC. The PCJC could now issue mandatory guidelines and policy directions to the CJC; order the CJC to initiate and pursue specific investigations into any conduct and activities of the CJC Commissioners or staff; it could inspect and copy all operational material (including that gathered through listening devices) for information purposes, and call the CJC to turn over confidential information when requested. The new legislation directed the CJC to obtain ministerial approval to any changes in the CJC budget, internal staffing and remuneration arrangements, and gave ministers the power to withhold funding for specific investigations.

In addition, a new office, a Parliamentary Commissioner, was created to act as a watch-dog on the CJC and enforce the powers granted to the Parliamentary Committee. The Commissioner's wide-ranging powers include the power to audit records and activities of the CJC and the investigation of complaints against the CJC which were referred to it by the Parliamentary Criminal Justice Committee. Much to the chagrin of the staff, there was a removal of the special legal protections and privileges they had enjoyed in the past.

5. Crime Commission and Children's Commission : Diverse Alternatives.

Another component in the attack on the CJC by the Borbidge Government was to organise an investigation which demonstrated that the CJC had been remiss in failing to attack organised crime, one of its terms of reference. The Government therefore created a small, specialised body for this purpose, independent of the CJC. The new Crime Commission was able to use its compulsion powers to aid police investigation of serious crime and rapidly developed a harmonious working relationship with QPS because of its sharply directed focus and sense of common purpose.

Public and government disquiet in Queensland was soon focused more on issues of moral depravity - not least because organised crime tends to be much lower-profile and engages agencies from both state and federal governments. A senior officer in the CJC was subjected to close police investigation concerning paedophilia and there were accusations that his own superiors had engaged in a cover-up to deny police access to evidence.

This led to government accusations that the CJC had also been remiss in not dealing with issues of paedophilia as one element of misconduct by public servants, especially accusations against teachers. (This was occurring simultaneously with startling revelations and admissions about misconduct in church-run establishments such as orphanages and private schools). It was also known that a former teacher and former Deputy Leader of the Labor Party was under investigation for similar misconduct – he was subsequently convicted and is currently serving a prison sentence.

Given this atmosphere, the Borbidge government then set up a Children's Commission with a highly paid permanent Commissioner and several part-time members. This took over various functions from the pre-existing Department of Family Services as well as the Education Department, the Health Department and the Police. The first Commissioner had a staunch National Party pedigree as well as significant periods of service in the state Education Department.

Before the Commission could start to make an impact, the Commissioner was investigated by the CJC for misuse of his public service vehicle and abuse of his entitlements for accommodation costs. Both were linked in oral and photographic evidence to his close affiliation with one of his office employees. Court action followed on related matters and the Commissioner subsequently resigned although no convictions were recorded.

He subsequently argued that his prosecution had been a political payback and an example of homophobia. However, as the local newspaper commented in response to these claims, "To some, to think the State's first Children's Commissioner of near retirement age would have a relationship with a man barely of legal age and would also allow him to be employed in his office is unthinkable" (Courier Mail , 15 September 2001)

6. The CJC under Beattie

It is too early to identify Beattie's intentions in relation to the supervisory arrangements for the CJC. In his early parliamentary career, Beattie had distinguished himself as a supporter of the CJC when he was consigned to the political wilderness during the Goss era. He served as chair of the parliamentary committee to which the CJC was notionally held accountable and supported its role as a critic of government.

He now faces the reality that the CJC has made a habit of advancing its independence through confrontation. He will be as inhibited as any of his predecessors in making changes which undermine its public standing because of the CJC's well-honed capacity to trade on the general public hostility towards politicians and its capacity to mobilise distrust of the police in particular.

During Beattie's first year in office, there was growing concern about the immunities conferred on the Parliamentary Commissioner, supported by the operation of the Parliamentary Committee to which she reported. A newspaper, called to account by the Commissioner, faced the claim that the Commissioner was protected by parliamentary privilege and also possessed special investigatory powers permitting secret interrogation which effectively placed the Commissioner, like a Star Chamber, above the law.

As a consequence, the device intended by the National Party to bring the CJC more firmly under parliamentary control failed the test of public opinion – particularly the opinion of the media which resented the Commissioner's intrusion into their own affairs. Under Beattie, the Commissioner operated only on the sidelines of parliamentary in-fighting and made no impact on the Police Service or the CJC. When the incumbent Commissioner was appointed to the District Court, the post was effectively put on hold.

The CJC was the instrument used by Beattie to set up an inquiry into misconduct which had been alleged to have occurred over a decade by Labor Party politicians. The activities of this most recent inquiry, and its final report, claimed a few high-profile political scalps – in the form of their disendorsement at the behest of the Premier and expulsion from the Party. The issue became the reason for calling an early election but failed to sustain public concern. The electorate almost immediately judged that the rorting of plebiscites was a minor misdemeanor, perhaps merely confirming public expectations about the venality and lack of virtue of politicians in general. The main impact of the inquiry in a political sense was initially to encourage the opposition that they could for the first time fight an election from the moral high ground against a party patently divided about how to deal with its own shady past.

In the longer term, Beattie was able to undertake a series of reforms to clean up party pre-selections and disown any dubious or illegal conduct by his colleagues. He was thus able to establish his long-term authority over the factions who had caused the problem in the first place because of their uncompromising commitment to fighting an internal war within the Labor Party.

Beattie thus saw no reason to undermine the CJC in his public comment, but rather to praise it for its continuing commitment to safeguarding ethical standards in public life. Others were less enthusiastic, including the growing cohorts of members of all parties affected in various ways by its investigations and the various public servants, school teachers and occasionally police officers ensnared in its tangled nets of secrecy and innuendo. There was also criticism of the high cost of the most recent inquiry (the CJC admitted to \$775,000, almost certainly an under-estimate) and the fact that so little happened as a direct result of its findings. The Report itself admitted that the Australian equivalent of the statute of limitations meant that proven breaches of the Electoral Act could not be prosecuted and anyway were not official misconduct in that those involved were not public officials or politicians at the time of these breaches.

The main Brisbane newspaper ran an editorial suggesting the CJC had reached its use-by date, while speaking up in favour of the Crime Commission which had established a positive working relationship with the Police Service.⁶ This was seen to typify a wider opinion that the CJC had not delivered enough outcomes to justify its existence.

In response to this sort of criticism, the CJC made major changes in its operational priorities. Resources are now to be concentrated on cases where serious official misconduct is alleged and there is a fair prospect of a 'result'⁷; its "corruption prevention profile" is to be raised by expanding the Commission's corruption prevention, education and research activities. It also aims to ensure its survival by increasing the range of educational products.⁸ Finally, it has begun conducting regular community attitudes surveys. The latter have gradually become an important indicator to advance claims about the agency's success and its resource needs, demonstrating the utterly predictable fact that the public in general have even less faith in their own politicians than in the CJC.

Premier Beattie had indicated one of his early post-election priorities would be to review and possibly rationalise the institutional effect of the National's own anti-CJC responses, namely the creation of the Crime Commission and the Parliamentary Commissioner for Criminal Justice.

After months of inactivity and agency politicking for self-preservation, he appears at the moment to be moving to accomplish this by announcing the decision to merge the CJC and the Crime Commission while remaining vague about the implementation details. Until these details are known, it will not be clear which of the dual elements will predominate in terms of organisational culture and focus of activities.

⁶ Courier-Mail, March 13, 2001.

⁷ Brereton 2000; AC 1996-1999.

⁸ For example, practical guides to corruption prevention, newspaper on anti-corruption issues, public ethics and public duty training kit, interactive CD-ROM, video presentations, video-based resource-kit for high school etc.

All that is currently on the public record is an announcement in July 2001 that the two organisations would merge, accompanied by an assurance that "neither organisation would be gutted", the two Commissioners would operate "on an equal footing" and there would be no job losses. Resources for research and intelligence gathering would be more efficiently managed. This move was welcomed by the Liberal Party leader, the Queensland Bar Association and the Queensland Law Society. The Bar Association spokesman noted that "historically, the Fitzgerald inquiry demonstrated the relationship between dishonest police and organised crime, so it makes sense to have the same body investigating both." (Courier Mail, July 11, 2001

7. Administrative Reform within the Police Service

In practice, the CJC had not been the mainspring of reform and modernisation within the Police Service because of its involvement in these wider political enquiries into misconduct and attention to other agencies. CJC enquiries when they were directed towards the Police tended to spend disproportionate amounts of time and resources on issues which acquired positive publicity for the CJC but lacked substance in terms of evidence, outcomes and changes to the practice of policing. Recommendations tended to take little account of the resource implications to be borne by the QPS or the QPS's own set of priorities.

Administrative reforms of a different nature were taking place over the decade since 1990 within the Queensland Police Service, driven by the Queensland Treasury implementation of 'Managing for Outcomes' across the Queensland public sector. This agenda has strong parallels with the Value For Money agenda in the United Kingdom. Essentially based on a purchaser/provider model, all government agencies have been required to report on the 'outputs' they provide in response to the 'inputs' from the Government. For some departments this exercise is relatively straightforward, but for policing, which is relatively seamless and also more reactive than planned, it is more difficult.

The Queensland Police Service suggested that the Government was purchasing a set number of policing hours from the Service. It has instituted a 'Statewide Activity Survey' completed by police for one week twice a year. All allocated costings are based on this model. In order to encourage problem-oriented policing, general policing is divided between two outputs: proactive and reactive policing. After some lively debate, the Service also argued successfully for the inclusion of Ethical Standards and Public Accountability as one of its outputs, to be able to place various measures of complaints against police and their outcome on the public record, with annual reporting on targets and achievements.

It appears to be an accepted prediction amongst criminologists that corruption runs on a ten-year cycle. Those who have observed the Police Service in the years since Fitzgerald tend now to assume there must be corruption because the required ten years have passed. The past is never far away in Queensland policing. Recently, the police spokesman for the National Party formed common cause again with the Police Union, this time over complaints about police housing in rural areas

and staff shortages. Then, echoing the remarks from the TV journalist which opened this paper, there was a concerted media campaign to rehabilitate Commissioner Terry Lewis, on the grounds that he had not received a fair trial. The presumption seemed to be that he deserved an honoured place in history, just like the ageing Bjelke-Petersen, and that, like Sir Joh, he was equally deserving of his knighthood and his pension. To Queenslanders' great credit, this claim was rejected by key figures from all parts of the political spectrum (although the Police Union remained studiously silent).

EPILOGUE

The key issue identified in this case study is the extent to which the activities of the CJC added a positive dimension to public sector virtue or whether, in Barberis's terms, the lack of discrimination in its activities ended up stifling the public sector ethos.

The Key Centre for Ethics, Law, Justice and Governance at Griffith University in Brisbane recently held a conference whose proceedings are available on the Centre's web-site. (www.gu.edu/centre/kceljag). The section devoted specifically to policing attracted a significant group of practitioners from all states as well as the usual academic suspects. What was strikingly common among all the contributors, including the current Chair of the CJC and the Police Commissioner, was the need to recognise that corrupt behaviour is an endemic temptation within police services.

Doug Smith, formerly of the Queensland Service and currently Acting Commissioner in the Northern Territory suggested that corruption would be classified in the public policy literature as a "wicked" problem. Its appearance on the wider political agenda was cyclical; for the most part it was constrained to manageable proportions by internal mechanisms but crises would slowly build up to the point where external intervention was required. The intervention would create a new set of institutions and new senior management; these managers would then internalise the problem over time before the cyclic increase in corruption recommenced.

A sour note was sounded by Tim Prenzler, also at the conference, who had published an article suggesting that "crucial elements of the CJC's functions and structure have exposed it to capture.... weakness in oversight could also be related to the combined effects of an appeasement strategy, an overly legalistic organisational culture, and inadequate quality control." (*Brit J Criminol* (2000) 40, 659). Many police and outside observers would agree with some of the latter comments, especially the poor quality control over both research and investigations, but the idea of exemplifying the relationship between the CJC and the Police Service as "regulatory capture" seemed ludicrous to people inside both organisations. The main tenor of the relationship varied between deep suspicion and aggressive criticism and distrust.

Mark Findlay, writing in the *Australian Quarterly* in 1994 from a NSW perspective where there is a similar but shorter history, raised many of the issues of public and

private concern about the CJC's own dimensions of public accountability in the form of five dilemmas. **(See end-note)** The CJC has tended to resolve those dilemmas in ways which were perceived to elevate the power, independence and capacity for survival of the organisation to the detriment of the rights and reputation of those whose behaviour they sought to regulate. Too often perhaps for its long-term survival, the CJC seemed to be relishing its omnipotence and behaving in a highly political way or secretly and unco-operatively without regard to the human dimension.

Findlay argued that "accountability is as much concerned with the confirmation of appropriate practice as it is designed to reveal malpractice or the abuse of power... the difficulty lies not so much with the features and consequences of accountability, but how it is perceived. For example, a control agency may see it as appropriate to use accountability to expose corruption, and even punish its perpetrators, but react in a hostile fashion at attempts at making the control process accountable.

Accountability mechanisms may also adopt or employ practices similar to those which they would otherwise expose to criticisms. Investigations may be clandestine, coercive and unresponsive to independent enquiry. And the consequences of such practices may prove to be as unjust or abusive as those of the powers under review."⁹

The critics of the CJC would regard the above statements as an accurate picture. The court system certainly decided on at least one occasion that issues of human rights were ignored when the CJC undertook covert surveillance against a citizen whose (unproven) misbehaviour was unrelated to crime and more to political activism. Public servants and outside observers agreed that the CJC's exercise of its powers was often misguided and counter-productive. In general, the continuing focus on issues of official misconduct which fell short of criminal activity tended to weaken the CJC's credibility. Whether it can regain this credibility with its re-incorporation of the Crime Commission remains to be seen. Much will depend on the leadership skills of whoever is put in charge, because as Maor points out, corruption is not just a crime problem, it is a political problem.

End-note

Findlay identifies five dilemmas:

(1) between independence and accountability:

How far can institutions of corruption control be required to account for the exercise of their powers -without compromising the legitimacy of their claimed independence?

(2) between responsibility and indemnity:

⁹ Mark Findlay, AQ, 1994.

How far can processes of corruption control advance their legitimacy through the responsible exercise of accountable power, while advertising individual indemnity as an investigatory tool?

(3) between publicity and secrecy:

How is the balance to be struck between the community interest in seeing corruption controlled, and the need to maximise investigative efficiency in secret?

(4) between anonymity and exposure:

To what extent should the punitive consequences of corruption control accompany each stage of exposure through investigating, and where should the rights of the individual gain the protection of anonymity?

(5) between selectivity and total enforcement

If the ideology of corruption control is total prohibition, then how can it sit with processes of selective enforcement mechanisms for requiring or ensuring accountability are suspected of punitive motivation and not considered complimentary to the exercise of 'real' institutional function.

The authors wish to acknowledge use of two draft papers not available for direct citation provided by the authors, Jenny Fleming, "Conduct Unbecoming : Independent Commissions and Ministerial Adversaries" and Moshe Maor, "The Politics of the Fight Against Public Corruption.