

Applying the Fitzgerald Principles

John Hyde

The Fitzgerald Report is more relevant to Queensland's real problems than I thought likely or, I suspect, the Government intended. Mr Tony Fitzgerald, a lawyer, put his finger on an underlying political malaise.

When Governments find their political propriety questioned, they order a Judicial enquiry. Usually these inquiries are led by a learned lawyer who diligently ferrets out illegal behaviour. But Ministers have such wide authority that the dreadful things they do seldom actually break laws. Loss of office is, of course, the appropriate sanction, but the judicially-trained inquirer seldom feels competent to pronounce on political matters, even if he can squeeze them into his terms of reference.

Without a shred of justification, but with considerable political effect, Ministers use the absence of legal evidence against them to whitewash their administrative actions. The real questions of public probity concern such matters as the granting of mineral leases, contracts, and development sites to friends of the Queensland government. In WA similar concerns surround the bale out of Rothwells and the subsequent attempted cover-up of the Government's liability with the purchase of nothing posing as a \$400 million Petro-Chemical Plant. In both cases it seems the law was not broken.

While these judicial damage-control mechanisms rehabilitate politicians' damaged reputations, small fry lose their reputations during Star Chamber inquisitions. Policemen who accept bribes from criminals, such as gamblers and prostitutes whose crimes have no victims but themselves, are sent to gaol, but Ministers, guilty of gross misuse of their authority, escape censure.

Fitzgerald did better than most.

His failure to name further names in the Report disappointed those people who get their pleasure from indignation, a sense of moral superiority and other's misfortunes. Fitzgerald, however, saw that identifying

systemic corruption was more important than identifying corrupt individuals. He saw that it was more important to set in place the conditions which would reduce future corruption than to pot a few minor crooks. He did what few Royal Commissioners have done: he sheeted maladministration home to its political source---"A Government which is self serving and cynical will have a bureaucracy which wholly or partly reflects the same attitude". He went further to propose political remedies for Queensland's corruption.

His failure to specify legally-binding procedures which could prevent corruption disappointed other critics. But, as Fitzgerald himself says: "Propriety and ethical behaviour are difficult to encapsulate in legal and structural terms."

Fitzgerald did recommend an Electoral and Administrative Review Commission, a Criminal Justice Commission, and solid re-organisation among the police. More importantly, however, he called for democratic procedures to be strengthened. I predict that, in the long run, this will be seen as the lasting strength of the Report.

If parliament is to discipline the executive, its members must be able, first, to inform themselves, then to inform the public, and finally to force an election whenever a government has behaved outrageously or, for that matter, thoroughly incompetently. The first two functions require a parliament that meets far more often than Australian State Houses do, an impartial Speaker, a question time which Ministers really respect, committees with adequate resources to probe the government, and several other procedural reforms.

Parliamentarians also need technical advice. This must be provided, not by the civil service, who cannot effectively serve two masters, but by independent statutory appointments which, like the Auditor General and the Ombudsman, report directly to parliament.

Because MPs are dominated by their parties, forcing an election seems to require an upper house which is confident of its own legitimacy. A majority that is hostile to the government helps. The Senate is such a house. Do not worry about it abusing its authority: the electorate, which is skeptical of politicians' motives and does not like unnecessary elections, will punish capricious use of Upper House power. One of Queensland's weaknesses is that it has no Upper House, but those States which do have them seldom employ them to full effect.

If, as seems possible, clear evidence emerges that the West Australian Government behaved very badly over the Rothwells/WA Inc. affair, then the Western Australian Upper House has a duty to force the government to an election. One of its proper roles is, when the circumstances demand it, to allow the public to judge whether the government is fit and proper. It does this by blocking supply and it fails in its duties if it does not take action. Upper houses often fail to employ their constitutional authority because their members

and the public feel that unequal electorates deny the chamber full legitimacy.

Fitzgerald noted the same problem with the Queensland Parliament. "The fairness of the electoral process in Queensland is widely questioned", he said. The problem in Queensland, however, is not merely a Parliament that will not stand up to the Executive, but a Parliament that has entrenched a particular Executive in office for too long. That administration was high handed, more socialist than any Australian Labor administration and ultimately corrupt. Of this last, Fitzgerald offers 35 pages of circumstantial evidence.

More important in overcoming corruption than any possible procedural changes or any likely prosecutions are the expectations of the general public. Fitzgerald was never more right than when he wrote: "The ultimate check on maladministration is public opinion". The leading citizens of Queensland have become accustomed to exchanging favours with the Queensland Government. The expectation that the government will do deals has to be replaced with the expectation that laws which make no favourites and are impervious to special pleading will prevail.

As I said, Fitzgerald did a remarkably good job. Was the National Party careless with his terms of reference?

John Hyde is Executive Director of the Australian Institute for Public Policy.

ENDS