

## REAL CONSTITUTIONAL REFORM AFTER FITZGERALD Still Waiting for Godot

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The Fitzgerald Inquiry, although initially focused upon matters such as maladministration and corruption, placed significant emphasis on the reform of Queensland's political and public administration system as a whole. It is therefore in relation to its practical impact within the context of that system that the Fitzgerald Report ought to be assessed. However, despite widespread support for the report's recommendations, recent events in Queensland concerning such matters as corruption, maladministration, lobbying, cronyism and secrecy suggest that the report has failed to deliver on its most basic objectives. This article argues that although the Fitzgerald Report drew attention to and sought to address systemic problems of various kinds, it has largely failed in its intentions because the changes that it proposed could not be sustained in the context of Queensland's existing constitutional framework and particular system of Westminster democracy, especially its high level of executive domination operating in the context of a unicameral parliament. The fact that so many of the Fitzgerald reforms were left to be sorted out by post-commission agencies working in such an environment means real reform has failed to flourish. Consequently, the Fitzgerald Report has met the same fate as so many other public inquiries into corruption in Australia, resulting in only minimal change to the way government is actually conducted. While as a result of the Fitzgerald Inquiry there has been widespread institutional restructuring in Queensland, the way of doing business in that state has hardly changed at all.

Any Government may use its dominance in the Parliament and its control of public resources to stifle and neuter effective criticism by the Opposition.

A Government can use its control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it.

— *Fitzgerald Commission Report*

Mr Godot told me to tell you he won't come this evening but surely tomorrow.

— *Waiting for Godot*

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It is 20 years since the tabling by Tony Fitzgerald QC of his *Commission of Inquiry Report into Possible Illegal Activities and Associated Police Misconduct*.<sup>1</sup> Given ongoing problems in Queensland highlighted recently by Tony Fitzgerald himself,<sup>2</sup> it is timely to consider how effective the Fitzgerald Report was in terms of its diagnosis, prescription and implementation. Recent events, such as the exposure of far-reaching networks between business and government, lobbying by former Labor ministers and the jailing of a former Beattie government minister for taking money from a coal-mining magnate, have heightened calls for another round of reform in Queensland.<sup>3</sup>

There have long been indicators that all is not well in Queensland, despite the Fitzgerald Report. For instance, the 2005 Queensland Public Hospitals Commission of Inquiry into the employment of overseas doctors in Queensland hospitals revealed the extent to which ministers lied and used loopholes in freedom of information (FOI) laws to repress details about hospital waiting lists and serious complaints about medical practices within the hospitals, and how senior bureaucrats, with ministerial support, had sought to intimidate departmental staff wanting to complain about poor medical practices; it also highlighted the politicisation of the public service and poor administrative processes.<sup>4</sup>

Other indicators of problems within Queensland's system of government have included the low number of parliamentary sitting days, political pressure placed on Auditors-General to keep clear of certain topics, partisan appointments to sensitive senior public service positions, rushed legislation and a lack of consultation. These complaints have been persistent and reflect ongoing failures of democratic governance in Queensland over an extended period. Tony Fitzgerald's recent assessment highlighted how little Queensland has changed since his 1989 report:

Secrecy was re-established by sham claims that voluminous documents were 'Cabinet in confidence'. Access can now be purchased, patronage is dispensed, mates and supporters are appointed and retired politicians exploit their political connections ... Neither side of politics is interested in these issues except for short term political advantage as each enjoys or plots for its turn at the privileges and opportunities which accompany power.<sup>5</sup>

It is relevant to connect the discussion of these ongoing problems of governance and democracy to the Fitzgerald Inquiry for several reasons.

First, it was the Fitzgerald Report itself that placed its investigation of corruption into the wider context of governance and democracy in Queensland as a

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<sup>1</sup> Hereafter, 'Fitzgerald Report'.

<sup>2</sup> *Courier-Mail*, 29 July 2009.

<sup>3</sup> Editorial, 'Changing a Culture', *The Australian*, 18 August 2009. This is a concern to which the Queensland government has responded by issuing a Green Paper, *Integrity and Accountability in Queensland* (August 2009). For an analysis of the Green Paper, see Williams (2009).

<sup>4</sup> The Queensland Public Hospitals Commission of Inquiry ('Davies Royal Commission').

<sup>5</sup> *Courier-Mail*, 29 July 2009.

whole. Fitzgerald surprised many when his inquiry, originally established to investigate police corruption, ventured into issues such as executive dominance, democratic accountability, public administration and electoral laws. Commissions of inquiry into corruption usually name names and detail who did what, when and how. They focus on particular individuals (eg members of parliament, public servants, members of the judiciary), certain aspects of government (eg police, prisons, hospitals) or on particular types of activities (eg drug trafficking, gambling, abortion, organised crime).<sup>6</sup> Instead, the Fitzgerald Report concentrated on the overall system of government. As the Fitzgerald Report stated:

The main object of this report and its recommendations is to bring about improved structures and systems. The past misdeeds of individuals are of less concern, except as a basis for learning for the future.<sup>7</sup>

And:

This report endeavours to identify major problems. It refers to issues which show the need for the introduction of new structures and systems, and revision of the old ones, as the foundations of reform.<sup>8</sup>

Because the Fitzgerald Report stressed that issues of governance were more important than naming names, it is in relation to its effectiveness in addressing these types of issues that its impact must be assessed. And it is in relation to these very issues that matters in Queensland seem to have gone so seriously astray in recent times.

Certainly, at the time of its release, some were critical of the emphasis on governance and democracy in the Fitzgerald Report, along with its failure to deliver on its basic terms of reference in relation to corruption. As Brian Toohey pointed out:

Fitzgerald heard serious allegations against politicians and senior police and managed to uncover pertinent documentation about certain financial transactions. He did not however, build upon this evidence to produce an overall picture of corruption, let alone provide findings about specific examples in the police force or the political and business spheres.<sup>9</sup>

Toohey argued that wider issues of governance were not part of the Fitzgerald Inquiry's terms of reference and that the inquiry did not take any evidence on these matters; hence the basis and quality of its proposals in this respect could be called into question.<sup>10</sup> Others also warned that the Fitzgerald Report's recommendations on government lacked precision:

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<sup>6</sup> See Prasser (2006), Appendix 2 and Appendix 10; Moffitt (1985).

<sup>7</sup> Fitzgerald (1989), p 8.

<sup>8</sup> Fitzgerald (1989), p 6.

<sup>9</sup> Toohey (1990), p 82.

<sup>10</sup> Toohey (1990), pp 86–87.

What throws into doubt the implementation of these proposals (about government and electoral reform) is not their controversy, but rather their lack of preciseness ... the lack of preciseness in the Fitzgerald Report ... will mean there will be considerable debate as to whether the Fitzgerald Report is being implemented or not ... The Report is too wide ranging and open-ended.<sup>11</sup>

This brings us to a second reason why the effectiveness of the Fitzgerald Inquiry needs to be assessed in relation to these wider matters of democratic accountability and public administration to which the inquiry itself drew attention. The inquiry was different from other inquiries not only in that it did not detail instances of corruption, but also in how it framed its recommendations in relation to both corruption and government reform. Fitzgerald himself stressed that the 'work started by this Commission [had] not been completed' and that its real task was to 'found the process of reform', emphasising that 'much remains to be done'.<sup>12</sup> Fitzgerald's solution was to propose the establishment of new bodies, in particular an Electoral and Administrative Reform Commission (EARC) and a Criminal Justice Commission (CJC), to carry on from where the inquiry had ended. These bodies would develop the more detailed recommendations for administrative, legal, parliamentary, police and justice reform that had been identified in the report. And it was this that made the Fitzgerald Report strikingly different. Fitzgerald even specified the way in which EARC and the CJC were to be established as independent bodies, how their members were to be appointed and their reporting processes to new parliamentary committees.<sup>13</sup> Indeed, the report asserted that:

The establishment of each of those bodies [EARC and the CJC] will provide a firm foundation for reform. It is those permanent bodies which will have the opportunity and the resources to continue the work of this Commission with respect to electoral, administrative and criminal justice reforms. These bodies and not this Inquiry will provide the appropriate forum for debate and determination of what specific reforms should be made.<sup>14</sup>

Reform arrangements such as these left room for considerable debate as to whether the recommendations of these bodies reflected what Fitzgerald really envisaged and for governments to come into conflict with these new external agencies. Indeed, given the public nature and procedures of the new bodies, any such conflict was destined to be highly observable and the subject of extended commentary. Furthermore, given that so much of the reform agenda was left to EARC and the CJC to assess and develop meant that it was impossible for an incoming government to be able to know, let alone fully support, all the proposals that had yet to be developed. Finally, and perhaps most importantly, the new agencies were being grafted on to the existing system of government, condemned

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<sup>11</sup> Prasser (1990), p 113.

<sup>12</sup> Fitzgerald (1989), pp 13–14.

<sup>13</sup> Fitzgerald (1989), pp 145, 366.

<sup>14</sup> Fitzgerald (1989), p 14.

by the report as being the very root cause of Queensland's corruption. Yet the Fitzgerald Report did not recommend any changes directed to the fundamental features of the system of government as a whole, changes that could — with the benefit of hindsight — have been the beginning of a really major reform of Queensland's political system: root, trunk and branch.

This article contends that the EARC and CJC models for pursuing ongoing reform, while distinguishing the Fitzgerald Report from other inquiries of this type, were also its elemental flaw. How would these two new bodies — which were supposed to be independent, accorded bipartisan support and adequately resourced — actually operate in a political environment dominated (as it was) by the executive government? In this context, there remained a basic shortcoming in the terms of reference of the EARC and the CJC: they did not have a mandate to question the fundamental structures of the Queensland political system — in particular, the far-reaching power of the Queensland government, in full control of all of the resources of the Queensland public service and responsible only to a single house of parliament over which it by definition held majority control. Although the Fitzgerald Report itself drew attention to executive domination of parliament as a root cause of the problems it identified, it did not recommend any specific changes to these fundamental features of the system before bodies such as the EARC and the CJC would begin to operate. The functions and powers of these bodies were limited and remained subject to government decisions about their composition, structure, resourcing, powers and fundamental objectives. While established by statute, a government with control over the parliament can make changes to them at will. While both bodies would indeed help to instigate significant reforms, the scope of those reforms would prove to be limited, as it would remain up to the executive government to decide what was acceptable and what was not.

The strategy of leaving the reform agenda ultimately in the hands of the very system of government and public administration that the inquiry had condemned seems, with the benefit of hindsight, to have been somewhat naive. That the National Party government — under whose administration the problems of corruption and poor governance had occurred — lost office six months after the Fitzgerald Report was released was coincidental and possibly fortuitous for the success of the reform process. However, Fitzgerald could and should not have assumed this as a possible outcome. Nor should anyone have assumed that the new Labor administration which won office in December 1989, although it embraced the Fitzgerald reform agenda prior to the election for reasons of both political conviction and convenience, would not face the unavoidable problems and tensions associated with attempting to carry out the many specific proposals of the Fitzgerald Report and those yet to be developed by two new extra-legislative bodies.

Finally, it is worth considering the impact of the Fitzgerald Report in terms of the particular form it took as a public inquiry. Failure to implement public inquiry recommendations is the major cause of dissatisfaction with such bodies.<sup>15</sup> Justice Moffitt, who chaired a Royal Commission into corruption in New South Wales,

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<sup>15</sup> Bulmer (1983), p 441.

lamented that with most inquiry reports, 'genuine decision and action ... is postponed and often avoided altogether. General recommendations ... [are] watered down ... reports are pigeonholed.'<sup>16</sup> Other chairs of similar inquiries have expressed similar complaints.<sup>17</sup> By contrast, the Fitzgerald Inquiry has long been seen as a resounding success in terms of what it discovered, what it proposed and how its recommendations were implemented. By general consensus, it has been seen as a 'landmark' inquiry. After all, Fitzgerald's recommendations were accepted by all political parties without question at the time of the report's release. The hapless Ahern government promised to accept all its recommendations 'lock, stock and barrel'<sup>18</sup> before even receiving the report! Implementing the Fitzgerald Report became the key election issue in the 1989 election.<sup>19</sup> As Labor leader Wayne Goss stressed during his policy launch:

The first commitment of myself and my team to the people of Queensland is that we will work to restore honesty and integrity to public life in Queensland. The starting point for rebuilding the integrity of our government and major institutions will be the implementation of the Fitzgerald reform process. In Parliament I pledged my commitment to implement Fitzgerald, and today I reaffirm that commitment.<sup>20</sup>

Subsequent Premiers and governments have made similar declarations. However, recent events suggest that the Fitzgerald Inquiry may not have been as successful as has so often been proclaimed, both in terms of its focus and its impact. The question is not just why Queensland government seems to be failing, but whether it was ever really fixed in the first place.

We suggest that it was not. We argue that the breadth and depth of the Fitzgerald vision was not matched by the proposed mechanisms for its implementation and that the potential for a yawning 'gap' between goals and outcomes was very significant. Our contention is that implementation of the wide-ranging and fundamental reforms envisaged by Fitzgerald, partly because they were not always clearly articulated, required more than just the establishment of new agencies, processes and committees. Fitzgerald himself rightly warned that such institutional and process 'innovations will be sterile and impotent if attitudes do not change'.<sup>21</sup> We propose that the constitutional and political system of government on to which the reform mechanisms were grafted — the root causes of corruption which Fitzgerald identified — could not sustain any challenge to its existing underlying arrangements. Instead of holding up the Fitzgerald Commission as an exemplary inquiry that has achieved much, we suggest that its reforms have been more illusory than real. The Fitzgerald Report, we suggest, did not grapple with

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<sup>16</sup> Moffitt (1985), p 19.

<sup>17</sup> Woodward (1989); Costigan (1984).

<sup>18</sup> 'Qld Government pledges back-up for Inquiry,' *Australian Financial Review*, 5 July 1988.

<sup>19</sup> See Whip et al (1991), p 80.

<sup>20</sup> Goss (1989), p 2.

<sup>21</sup> Fitzgerald (1989), p 358.

Queensland's unique version of parliamentary responsible government and to confront how Westminster principles ought best to be applied to the realities of modern-day government generally, as well as Queensland's unique political culture, shaped significantly by its unicameral legislature.

Although many changes have been made to Queensland's public administration, parliamentary procedures and electoral processes, the failure to address the constitutional framework in which these institutions operate has meant that democratic governance has hardly improved, regardless of which party has held office. The array of serious problems now coming to the surface can be traced in large measure, we say, to the fundamental problem that the executive government dominates Queensland's unicameral parliament.<sup>22</sup> We do not contend that executive control of parliament is not a problem in other Westminster systems. But we do say that the problem is especially acute in the Queensland context. Nor do we claim that the mere existence of a second chamber is a panacea. The track record of Australian upper houses presents a mixed picture.<sup>23</sup> However, we do maintain that the existence of a democratically elected second chamber provides a vital opportunity for significantly improved parliamentary scrutiny of government and a check on its decision-making power.

With this background in mind, the remainder of this article seeks to undertake a general review of what Fitzgerald said, how his recommendations were implemented and the institutional settings in which this occurred. Our principal objectives will be to:

- identify the principles of government, and of constitutional and public sector reform that underpinned the Fitzgerald vision;
- assess and categorise these proposals in relation to existing principles and values of Westminster government;
- analyse the changes made in the name of Fitzgerald and compare these with the Fitzgerald vision and the practices of modern government, as well as Queensland's particular constitutional and public administration settings, in part to assess whether these were used to manipulate political advantage; and
- review Queensland's present constitutional and public sector arrangements in relation to both overt and formal changes, and whether the spirit of democratic transformation and an ongoing climate of reform have been achieved.

### **Fitzgerald's Assessment**

In essence, Fitzgerald placed the problems of police corruption and inappropriate dealings between government and business into the wider 'political context' of Queensland's system of government (Section 3 of the report). It was Fitzgerald's contention that 'problems with and deficiencies in vital institutions and processes were evident from indisputable evidence in the hearings'.<sup>24</sup> However, as noted, the

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<sup>22</sup> See Aroney et al (2008); Aroney (2008).

<sup>23</sup> See Costar (2008); Macintyre and Williams (2008); Stone (2002, 2005, 2008).

<sup>24</sup> Fitzgerald (1989), p 5.

evidence about these matters marshalled by Fitzgerald was not conceptually related to the specific examples of corruption or maladministration uncovered by the inquiry. The Fitzgerald Report provided a critique of Queensland's constitutional and political system as a whole, from a particular view of the ideals of Westminster democratic systems and Queensland's apparent failure to adhere to these ideals. However, the relationship between the constitutional system and endemic corruption and maladministration was implied rather than clearly stated. There was no clear articulation of what the inquiry saw as the key elements of the Westminster system, ideally conceived. Rather, its discussion of the parliament, the executive, electoral laws, administrative review and administration left it to readers to draw their own conclusions about Fitzgerald's take on the Westminster system. In only one short paragraph about the public service is there an attempt to describe the Westminster system in ideal terms, and even this is both rudimentary and qualified:

The Westminster system of parliamentary democracy is based on the proposition that governments answerable to the people decide policy, and public servants implement it. There are conceptual and practical difficulties with this model, but it essentially states the basic constitutional position.<sup>25</sup>

Little more is explained. The degree to which there are conceptual and practical difficulties with this model is not assessed. It is left to the reader to infer from the report's specific criticisms of executive government, parliament and the electoral system the conception of an ideal Westminster system underlying the report's often scathing observations.

In summary, the Fitzgerald Report identified the following fundamental defects in Queensland's system of government:

- a weak parliamentary system, involving limited scrutiny of executive government, few sitting days, a limited parliamentary committee system<sup>26</sup> and a poorly resourced opposition that restricted democratic discourse;<sup>27</sup>
- an unaccountable Cabinet and wider ministry in relation to individual ministerial actions and especially in the awarding of government contracts;<sup>28</sup>
- excessive secrecy in government, maintained through the doctrines of Cabinet solidarity and collective responsibility and in the absence of FOI legislation;<sup>29</sup>
- a biased electoral distribution system, particularly through the malapportionment of rural electoral districts;<sup>30</sup>
- limited administrative review mechanisms, with existing bodies such as the Ombudsman unable to make up for the deficiencies;<sup>31</sup>

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<sup>25</sup> Fitzgerald (1989), p 129.

<sup>26</sup> Fitzgerald (1989), pp 123–24.

<sup>27</sup> Fitzgerald (1989), p 123.

<sup>28</sup> Fitzgerald (1989), pp 125–26.

<sup>29</sup> Fitzgerald (1989), pp 126–27.

<sup>30</sup> Fitzgerald (1989), pp 143–44.

<sup>31</sup> Fitzgerald (1989), pp 128–29.

- a politicised, non-independent and unreformed public service;<sup>32</sup>
- cronyism, especially regarding appointments to government boards<sup>33</sup> and even to judicial office;<sup>34</sup>
- a culture of fear and silence within the public service, especially in the absence of whistleblower protections;<sup>35</sup>
- inadequate financial processes, with the Auditor-General lacking power to undertake more wide-ranging reviews of government expenditure;<sup>36</sup>
- recurrent conflicts of interest by ministers, exacerbated by a lack of a pecuniary interest registration and the practice of awarding government contracts in return for support and donations;<sup>37</sup>
- propagation of government views by misuse of public funds for large-scale government media units and use of news management techniques;<sup>38</sup>
- lack of adherence to the separation of powers doctrine between executive government, the judiciary and parliament — although this was discussed primarily in relation to the appointment of judges and administration of courts.<sup>39</sup>

While the Fitzgerald Report drew attention to the inadequacies of the Westminster system as it operated in Queensland, many of these criticisms could be directed to the practical operation of other Westminster systems elsewhere in Australia — especially at a state level.<sup>40</sup> Indeed, there was very little evidence considered by the inquiry that enabled Queensland's problems to be compared with those of other states. How was Queensland's public administration more inefficient than or different from other jurisdictions? What judicial and public service appointments were inappropriate? How does Queensland's parliamentary performance differ from that of other states?

Nor did the Fitzgerald Report, in its brief (one and half page or less) coverage of each of these issues, suggest any specific remedies. Instead, a list of 16 items concerning governance issues was referred to the EARC for future assessment.<sup>41</sup> A similar list was outlined for the CJC in relation to criminal justice issues.<sup>42</sup>

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<sup>32</sup> Fitzgerald (1989), pp 129–34.

<sup>33</sup> Fitzgerald (1989), p 118.

<sup>34</sup> Fitzgerald (1989), p 133.

<sup>35</sup> Fitzgerald (1989), pp 133–34.

<sup>36</sup> Fitzgerald (1989), p 135.

<sup>37</sup> Fitzgerald (1989), pp 143, 148.

<sup>38</sup> Fitzgerald (1989), pp 141–42.

<sup>39</sup> Fitzgerald (1989), pp 133–35.

<sup>40</sup> Uhr and Wanna (2000).

<sup>41</sup> Fitzgerald (1989), pp 144–45.

<sup>42</sup> Fitzgerald (1989), pp 372–76.

## Impact and assessment

### *Parliament*

A weak legislature, Fitzgerald stressed, is a necessary requisite for a government seeking to attain and maintain control of the political process within a political community. The Fitzgerald Report observed:

It is much less likely that a pattern of misconduct will occur in the Government's public administration if the political processes of public debate and opposition are allowed to operate, and the objectives of the parliamentary system are honestly pursued.<sup>43</sup>

However, the Fitzgerald Report recommended only very minimal reforms to the parliamentary process. Apart from the Report's recommendation for the establishment of a Parliamentary Criminal Justice Committee (PCJC) and a Parliamentary Electoral and Administrative Review Committee (PEARC), together with some rather minor procedural changes, fundamental reform to the parliament's operating procedures and effectiveness has been limited.

For instance, the Queensland parliament's low number of sitting days has hardly changed. Annual average sitting days for parliament during the Goss Labor government between 1989 and 1996 was 50.1 days — more than under the Nationals from 1984–89 (average 43 days), but significantly less than during the period of joint National-Liberal government between 1970 and 1983 (average 58.2 days). There has been little change since. As Janet Ransley recently concluded, 'parliament still meets relatively infrequently in Queensland and has had a declining legislative program'.<sup>44</sup> Indeed, despite certain procedural changes — such as increased numbers of questions and more ministerial statements — Ransley assessed that 'there is little evidence ... of much real reform in practice, and any extra time is largely spent in political set pieces'.<sup>45</sup>

The Fitzgerald Report saw the establishment of 'a comprehensive system of parliamentary committees' as a way to enhance parliament's ability to monitor executive government.<sup>46</sup> But such a system was never fully realised. The EARC's recommendations for a range of five portfolio-based committees were modified by the government-dominated PEARC to a more limited, functional range of committees, together with a system of short-term estimates committees. While these changes were an improvement over the previous limited number of committees,<sup>47</sup> they have been criticised as a second-best outcome.<sup>48</sup> Indeed, Queensland's abolition of its upper house has even been seen by some as a reason why the

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<sup>43</sup> Fitzgerald (1989), p 123.

<sup>44</sup> Ransley (2008), p 252.

<sup>45</sup> Ransley (2008), p 252.

<sup>46</sup> Fitzgerald Report (1989), p 124.

<sup>47</sup> The Subordinate Legislation Committee had been established in 1975 and the Public Accounts Committee in 1988.

<sup>48</sup> Solomon (1993); Ransley (2008), pp 253–54.

committee system prior to the Fitzgerald Report was so poor. Former Labor Premier Wayne Goss candidly acknowledged years later:

Until 1922 Queensland used parliamentary committees extensively in areas such as legislation, land transactions, sale of government assets and policy proposals with members of both the Legislative Assembly and the Legislative Council often working together on issues of concern. But with the abolition of the Upper House in March 1922 by a bold and visionary Labor Government came the demise of a comprehensive parliamentary committee system.<sup>49</sup>

Moreover, reports by the new PCJC were often not debated in Parliament, nor was there any guarantee that the government would even respond to its proposals, as was the case with the PCJC report on the operations of the PCJC in relation to the CJC and parliament tabled in December 1991. As Peter Beattie, then chair of the PCJC, complained: ‘This divergence from the ideals of Fitzgerald is of concern.’<sup>50</sup> Other newly introduced committees, such as the Estimates, Public Works and Scrutiny of Legislation Committees, have likewise been deemed to have had limited impact.<sup>51</sup>

More recent calls for parliamentary committees have met with limited responses. The Beattie government (1998–2007) never established the parliamentary committee on health as suggested by Forster Review of Queensland Hospital Management conducted in 2005.<sup>52</sup> Premier Bligh, on the eve of the first sitting of parliament following the 2009 election, announced a revamping of the parliamentary committees without any consultation with the opposition,<sup>53</sup> hardly an instance of the kind of bipartisanship that Fitzgerald had envisaged for the committee system.

Another key issue addressed by Fitzgerald concerned the inadequacy of resources provided for the opposition within parliament, such as staff, office space and equipment. The Fitzgerald Report noted that:

[an] effective Opposition is ... essential for the proper functioning of parliamentary democracy. Non-government party members must be provided with appropriate resources and detailed information to enable them to ... criticise.<sup>54</sup>

National Party and Coalition governments had given only limited resources to oppositions in order to minimise their effectiveness. In response to this abuse of power, the Fitzgerald Report recommended that the EARC review ‘the provision

<sup>49</sup> Goss (2000), p 2.

<sup>50</sup> Beattie (1992a), pp 135–48.

<sup>51</sup> Ransley (2008), pp 253–57.

<sup>52</sup> Forster Review (2005), p. 337; see various comments on the Forster Review, *Courier-Mail*, 1 October 2005.

<sup>53</sup> O’Brien (2009).

<sup>54</sup> Fitzgerald Report (1989), p 12.

non-government parliamentary members with appropriate resources'.<sup>55</sup> When the EARC reported on this matter, it concluded that the 'number of support staff allocated to the Leaders of the Opposition parties fell far below those allocated to Ministers',<sup>56</sup> and recommended an increase in opposition staff numbers to 20 per cent of that allocated to government ministers. However, although supported by the PEARC, this recommendation was rejected by the Goss government on the grounds of costs and comparisons with other states.<sup>57</sup>

Such incidents illustrate that, although the parliamentary committee system was indeed strengthened and improved as a result of the Fitzgerald Inquiry — resulting, for example, in an increased number of reports and recommendations — the committees have nonetheless remained peripheral to the formulation of government policy. After all, at their best committees can only reflect the makeup of the parliament — and in a unicameral system the government *always* has the numbers.

### *Financial Administration*

Another perceived deficiency of Queensland government identified by Fitzgerald was poor financial processes combined with a weak Auditor-General who lacked adequate resources and whose reports 'contained little by way of critical comment'.<sup>58</sup> Here, as elsewhere, the executive government eluded proper external scrutiny.

In response, the EARC proposed increasing the independence of the Auditor-General by formally separating this function from the Queensland Public Service and the arrangements that governed it. In addition, the EARC suggested that a reorganised Auditor-General's Office be responsible for evaluating the performance of government departments in meeting policy goals.<sup>59</sup> However, these recommendations were rejected by the government, much to the chagrin of the Australian Society of Certified Practising Accountants and the Institute of Internal Auditors, both of which saw this as a lost opportunity and concluded that the Auditor-General 'will not be able to report wasteful and/or deficient use of public moneys'.<sup>60</sup> Remarkably, when in 2003 the Auditor-General responded positively to an opposition request to monitor government expenditure on advertising in line with the *Advertising Code of Conduct*, he was publicly called to account for his actions by the Premier, who at the same time announced that the Department of Premier and Cabinet would be conducting a review of the Auditor-General's Office. The result was a much-diminished review of government spending in this area.<sup>61</sup> Later, the Auditor-General was reported to have been admonished by Premier

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<sup>55</sup> Fitzgerald Report (1989), p 371.

<sup>56</sup> EARC (1991a), p 138.

<sup>57</sup> *Courier-Mail*, 11 November 1992.

<sup>58</sup> Fitzgerald (1989), p 135.

<sup>59</sup> EARC 1991(b).

<sup>60</sup> *The Australian*, 11 August 1992.

<sup>61</sup> 'Auditor-General Probes Political Advert Claims', *Courier-Mail*, 2 December 2003; Parnell (2004a).

Beattie and Deputy Premier Terry Mackenroth for talking to the media about special audit reports and was warned that such interactions with the media must be strictly limited in the future.<sup>62</sup>

While there have been wrangles over the independence of Auditors-General in other jurisdictions,<sup>63</sup> this does not diminish how this important watchdog of executive government has been kept on a tight leash in post-Fitzgerald Queensland. Recent changes to legislation to place the Auditor-General on a more independent footing<sup>64</sup> are certainly welcome, but their effectiveness will have to be monitored closely, given this history of executive government intimidation of the office.

### *The Public Service*

A major aspect of the Fitzgerald reform agenda was fixing Queensland's allegedly outdated, politicised, crony-dominated and consequently low-morale public bureaucracy.<sup>65</sup> The Queensland Public Service, said the Fitzgerald Report, should be able to 'provide independent, impartial, expert advice' and to operate in an environment 'without concern for the political or personal connections of the people and organisations affected by their decisions'.<sup>66</sup> Such perceptions were hardly surprising, of course, given the long period of incumbency of non-Labor governments in Queensland. At the time of the Fitzgerald Inquiry, the Queensland Public Service had not experienced a change of government since 1957.

However, despite stressing the need for an independent public service, the Fitzgerald Report provided no explicit examples of corruption or poor practices within the existing system. Nor did the Fitzgerald Report outline a clear framework for public service change, specific principles of operation, or the appropriate relationships it should have with executive government.<sup>67</sup> Again, this was left to the EARC to assess further. Such a gap allowed any incoming government to interpret 'reform' in this area in ways most advantageous to itself. This lack of precision and specificity in Fitzgerald's recommendations again undermined their efficacy as initiators of effective reform.

It must also be noted that one of the trends of administrative reform at state and federal levels in Australia during the 1980s was the desire by governments to fashion more 'responsive' public bureaucracies through the direct appointment of department heads, an increasing use of contracts for senior staff, the abolition of public service boards and an increase in lateral appointments to senior positions. The Fitzgerald Report provided the trigger and justification for these changes in Queensland, notwithstanding that the partisan opportunities this opened up were clearly contrary to the original intentions of the report. Opposition leader Wayne Goss certainly envisaged more widespread changes prior to gaining office, when he stressed that there was 'considerable scope for further reform beyond the terms of

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<sup>62</sup> Parnell (2004b).

<sup>63</sup> Harris (1999); Funnell (1996).

<sup>64</sup> *Auditor-General Act 2008* (Qld).

<sup>65</sup> Fitzgerald (1989), pp 129–34.

<sup>66</sup> Fitzgerald (1989), p 130.

<sup>67</sup> Nethercote (1990).

reference investigated by the Fitzgerald Commission'.<sup>68</sup> Goss thereby hoped to 'complete the reform process' through 'a more thorough-going review of the structural and overall management of Queensland public sector'.<sup>69</sup>

Foremost among these additional changes was the establishment of the Public Sector Management Commission (PSMC). This was not a recommendation of the Fitzgerald Report or of the EARC. The establishment of the commission was announced almost immediately after the change of government in 1989, and was portrayed by the Goss government as being in the spirit of Fitzgerald. Indeed, it was said that it would constitute a 'Fitzgerald reform trilogy comprising of EARC, the CJC and now the PSMC'.<sup>70</sup> That the PSMC was staffed by people from outside the Queensland Public Service and that most of the existing departmental heads were replaced by newcomers from outside Queensland, many of whom had Labor Party connections, hardly inspired confidence in the impartiality of the reform process. Professor Kenneth Wiltshire summed up the problem:

Some of the most clearly identifiable Labor Party figures were appointed to various parts of Queensland's public administration ... It is not difficult to understand why many aggrieved public servants have attempted to make a connection between the restructuring of the Public Service and the political allegiances of those overseeing it.<sup>71</sup>

An EARC survey of public servants found in 1991 that 59 per cent of respondents believed cronyism was alive and well under the Goss government.<sup>72</sup> While there were some worthwhile improvements in public administration processes in Queensland, the public service has come under increasing political direction and centralised control. This complaint has not been limited to the Labor Party. Reports that the short-lived Borbidge Coalition government (1996–98) had a 'hit-list' of public servants it wanted to dismiss hardly imbued confidence in the system.<sup>73</sup> Later assessments by the Davies Royal Commission<sup>74</sup> and others,<sup>75</sup> and an outcry over the appointment of perceived partisans to sensitive public service roles,<sup>76</sup> reinforced the conclusion that public service reform in Queensland as suggested by Fitzgerald has not been achieved.

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<sup>68</sup> Goss (1989), p 5.

<sup>69</sup> Goss (1989), p 5.

<sup>70</sup> Goss (1989), p 6.

<sup>71</sup> Wiltshire (1992), pp 269–70.

<sup>72</sup> EARC (1991b).

<sup>73</sup> *The Australian*, 12 September 1997.

<sup>74</sup> See Davies Commission, pp 42–48, 343–61, 473–95.

<sup>75</sup> Wiltshire (2006); De Maria (1999).

<sup>76</sup> Cathi Taylor's appointment as Information Commissioner was seen by the media and other commentators as unsuitable, given that she was wife of the head of the Premier's Department, that some of her referees were on the appointment committee, that she had former Labor Party connections and was deemed by some as having unsuitable qualifications for this important position. See Editorial, *Courier-Mail*, 7 March 2005; Albietz (2005); De Maria (2005).

### *Electoral Reform*

Electoral reform and the ending of Queensland's malapportioned zonal electoral system was another area singled out by Fitzgerald as a matter for the EARC to address. Some have argued that the 'gerrymander' was a myth and that its advantage to the incumbent National Party was exaggerated.<sup>77</sup> Nevertheless, the electoral system was earmarked for change and EARC in due course provided detailed analysis and presented viable options. Overall, the changes proposed were assessed as reasonable and fair, though including minor weightage.<sup>78</sup> Importantly, in this crucial area the Goss government accepted the advice it was given, even though it did not exactly accord with Labor Party policy of one vote, one value. However, since then there have been other changes to electoral laws that have not had the benefit of the EARC process.

### *Secrecy*

Secrecy and propaganda, said the Fitzgerald Report, 'are major impediments to accountability'.<sup>79</sup> Developing a modern FOI system was thus another area for the EARC to investigate. The EARC reported on this issue,<sup>80</sup> and had most of its proposals endorsed by the PEARC. However, in a number of key areas (eg non-exemption of government business enterprises and the limitation on government to exempt agencies from FOI legislation), the Goss government departed from the recommendations of the EARC Report. Later modifications, including increased charges, further restricted FOI legislation in Queensland, with the result that executive secrecy remained largely intact.<sup>81</sup> Indeed, it took the Davies Royal Commission into health to expose the limitations of the FOI legislation — in particular, the rule that documents taken to Cabinet could be exempted from FOI access — a loophole that was used by Coalition and Labor governments to conceal from the public vital information about public hospital waiting lists and other matters.<sup>82</sup> At least this problem finally appears to have been addressed through the 2008 Solomon Review of the *Information Act*<sup>83</sup> and the new *Right to Information Act 2009*.

### *Media Manipulation*

The Fitzgerald Report was highly critical of the way National Party governments had manipulated the media through the misuse of government media units producing 'politically motivated propaganda' parading as 'facts' and public information.<sup>84</sup> Others agreed.<sup>85</sup> A subsequent EARC report<sup>86</sup> found evidence of

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<sup>77</sup> Mackerras (1990, 1992).

<sup>78</sup> Mackerras (1992).

<sup>79</sup> Fitzgerald (1989), p 126.

<sup>80</sup> EARC (1990).

<sup>81</sup> Solomon (2003); De Maria (1999).

<sup>82</sup> Davies Royal Commission (2005), Chapter 6.

<sup>83</sup> Solomon (2008).

<sup>84</sup> Fitzgerald (1989), pp 141–42.

journalists being rewarded and punished through the provision or denial of information from the Goss government. Under the Goss government, media units expanded in numbers and were 'co-ordinated by a senior media adviser in the Premier's Office'.<sup>87</sup> As Grundy points out, the only change from the past in terms of media manipulation was that the Goss government was 'better at it' than its National Party predecessors.<sup>88</sup> In response, the EARC proposed codes of conduct, the establishment of an Information Policy Board, better support for the opposition and guidelines for distribution of information by government agencies to counter these problems. While some of these proposals have been implemented, the Queensland government continues to operate large media units and has extensive monitoring arrangements. There has been no major reassessment of this issue since the EARC's 1993 review. It is not part of the Blich government's Integrity and Accountability review.

### *The Fate of the EARC*

Perhaps, at this juncture, it is appropriate to review the fate of the EARC. The EARC was widely seen to have done an exceptional job in reviewing and reporting on the myriad of complex issues referred to it by the parliament and earmarked by the Fitzgerald Report. As Professor Wiltshire commented:

The EARC has been a model organisation in terms of administrative reform. It has been completely open in all of its work. It has been highly efficient, having processed just about all of the agenda which Fitzgerald laid down for it in only two years ... All in all, the EARC has been a cornerstone of the reform process giving exceptional value for money to the citizens and taxpayers of Queensland, and one of the most successful innovations introduced into Westminster systems during the twentieth century.<sup>89</sup>

Despite its success and strong support for it to continue, EARC was disbanded after only four years, even though some of its commissioners were initially appointed to five-year terms.<sup>90</sup> As John Wanna has asked: 'If EARC really was so successful, why then was it closed down?'<sup>91</sup> By bringing to an end one of the prime mechanisms by which the Fitzgerald recommendations were being implemented, the entire Fitzgerald program seems to have become unstuck. Wanna summarises the situation:

Within the Goss Government many breathed a sigh of relief as EARC was closed down; not because EARC had actually caused the Government serious problems, but because while it existed it was a potential source of conflict

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<sup>85</sup> Coaldrake (1989), p 100.

<sup>86</sup> EARC (1993).

<sup>87</sup> EARC (1993), p 31.

<sup>88</sup> Grundy (1992), p 51.

<sup>89</sup> Wiltshire (1992), p 265.

<sup>90</sup> Prasser (1994).

<sup>91</sup> Wanna (1994), p 167.

and an independent avenue of policy advice separate from the conventional executive dominated process.<sup>92</sup>

Fitzgerald may have given birth to the EARC but in the end it was the executive government which determined not only which of the EARC's recommendations would be accepted, but also whether the EARC itself would continue to exist.

### *Criminal Justice Reform*

While political priorities occasionally overrode Fitzgerald's reform objectives in relation to parliament and public administration, this was even more common in relation to the CJC in its role as the state's anti-corruption and police watchdog. Over time, conflict between the CJC and the government became commonplace, especially concerning such matters as the appointment of chairs, issues to be investigated, responses to report recommendations and levels of accountability.

From the beginning, the incoming Goss Labor government had difficulty entrusting responsibility for the CJC's operations to its inaugural chair, Sir Max Bingham, who had been appointed by the former government and had been a member of the Tasmanian Liberal Party. One Labor backbencher (Robert Schwarten) even publicly urged Sir Max to return to Tasmania.<sup>93</sup>

In a number of areas, the Goss government rejected CJC proposals. For example, on the key issue of prostitution — one of the issues that had triggered the Fitzgerald Inquiry — Premier Goss pre-empted the CJC Report by declaring the government's policy not to legalise prostitution before the CJC had completed its report or the PCJC had responded to the proposal. This, Sir Max Bingham pointed out at the time, was contrary to the spirit of the reform process.<sup>94</sup> Indeed, the Goss government's subsequent rejection of the CJC Report and its introduction of Australia's most punitive anti-prostitution laws were seen by Terry O'Gorman, president of Queensland's Civil Liberties Council, as opening up the potential for further corruption to occur.<sup>95</sup> Other CJC reports found unacceptable by the government included those on poker machines and SP bookmakers. Such disagreements over policy are inevitable, but they had a tendency to undermine the CJC and highlighted flaws in the implementation of Fitzgerald's vision.

The CJC, with its independent powers of investigation, had the potential to embarrass any government in power. This was most clearly seen in 1992 when the CJC investigated MPs' travel claims and found 54 government and opposition members, including 14 ministers, had been 'roting the system'.<sup>96</sup> This led to the dismissal of two Labor ministers, including the then Police Minister, Terry Mackenroth.

Quite early on, the CJC had its funding reduced — from \$20 million in 1990–91 to \$17 million in 1991–92. This, said commentators at the time, was

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<sup>92</sup> Wanna (1994), p 163.

<sup>93</sup> *Courier-Mail*, 28 February 1991.

<sup>94</sup> *Sydney Morning Herald*, 30 November 1992.

<sup>95</sup> *The Australian*, 27 October 1992.

<sup>96</sup> CJC (1992).

'hardly a strong commitment of resources to the fight against organised crime'.<sup>97</sup> Repeated calls by Sir Max for Premier Goss to publicly endorse the work of the CJC met with a lukewarm response.<sup>98</sup> Sir Max himself highlighted these ongoing problems for the CJC in late October 1992, when he observed that he had not realised:

How politically charged [the] job would be. I thought I'd be largely superintending the operation of the criminal justice system ... in fact, we barely got around to that end of the thing.<sup>99</sup>

Further underscoring the executive government's antipathy to the CJC has been the way Sir Max Bingham's successors have been appointed. The Fitzgerald Report stressed that appointments to this key position required full consultation with the opposition and that the PCJC as a bipartisan committee was to be the key vehicle for overseeing the process. However, this principle has been more honoured in the breach.<sup>100</sup> Several new chairs have been announced prior to the selection process, with the opposition being 'informed' of, rather than consulted about, the replacement. In 1992, Sir Max Bingham observed:

Politically, while current rhetoric dictates that each and every member of the Legislative Assembly will loudly proclaim his or her commitment to reform, the actual experience of the CJC suggests that the practical manifestations of reform are not so welcome after all. There has been progress, but economic difficulties and competing agendas have combined to lessen the impact of some of the Fitzgerald philosophy.<sup>101</sup>

After his retirement, Sir Max recalled how several ministers had threatened both himself and other members of the CJC during its investigation into MPs' travel rorts. As Sir Max put it, 'almost daily there were messages from various political quarters that it would be a good idea if we were to all drop dead'.<sup>102</sup>

Sir Max's retirement in December 1992 did not, however, herald a new era of relations with government. On the third anniversary of his election as Premier, Mr Goss lamented that the actions of the CJC 'were one of [the] biggest disappointments'<sup>103</sup> of his first term. Subsequent events reinforced the perception that governments had a strong desire to see the CJC emasculated. For instance, ministerial responsibility for the CJC was downgraded following Labor's re-election in 1992, when the Attorney-General took over from the Premier as the

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<sup>97</sup> Griffith and Fitzgerald (1992), p 119. Funding has fluctuated for the CJC and its successor, the CMC.

<sup>98</sup> *The Australian*, 27 June 1992; *Courier-Mail*, 27 July 1992.

<sup>99</sup> Robson (1992), p 34.

<sup>100</sup> Griffith (1992).

<sup>101</sup> Bingham (1992), p 99.

<sup>102</sup> *Sydney Morning Herald*, 30 November 1992.

<sup>103</sup> *Courier-Mail*, 4 December 1992.

minister responsible for such matters. While acceptable given the nature of the portfolio, this was perhaps done too early in the reform process.

Relations with subsequent CJC chairs continued to be strained. Robin O'Regan QC lamented after his retirement as chair of the CJC that:

Law reform in Queensland had been ambushed by political opportunism ...  
The Goss Government's political agenda had overtaken the reform process  
initiated by anti-corruption commissioner, Tony Fitzgerald.<sup>104</sup>

There continued to be wrangles over the roles and functions of the CJC. In 1996, the Borbidge Coalition government mounted its own inquiry into the CJC following the CJC's investigations into the 1995 pre-election arrangement entered into between the Coalition and the Queensland Police Union (the Connolly-Ryan Inquiry). Borbidge saw the CJC being chaired by those who 'were politically active' and usurping the parliamentary process.<sup>105</sup> The inquiry was itself abandoned, however, when it was found by a court to have ostensible bias.<sup>106</sup>

Further undermining of the Fitzgerald vision occurred under the second Beattie government, which in 2002 amalgamated the CJC and the then Crime Commission to form the Crime and Misconduct Commission (CMC). The new CMC no longer directly investigated many of the complaints against police and other public figures. Instead, such complaints were increasingly delegated to the relevant agencies.<sup>107</sup> Robert Needham, the present chair of the CMC, has also pointed out that 'legal limitations' have prevented the CMC from investigating misconduct by politicians and public servants more thoroughly.<sup>108</sup> Others have seen these trends as reflecting a loss of zeal on the part of the CMC. As commentator Tony Koch concludes, the CMC as Queensland's 'feared watchdog was neutered ... and remains in a castrated state'.<sup>109</sup>

The difficult relations between successive governments and the CJC highlight the problems of grafting on to the Westminster system of government an external body with considerable powers to oversee executive government actions. Even for an administration that was new and committed to 'reform', like the Goss government, the existence of a body like the CJC posed complex challenges of management and adjustment. These problems were exacerbated in Queensland's unicameral Westminster system, which provided no countervailing force to executive government dominance.

<sup>104</sup> *Courier-Mail*, 23 September 1995.

<sup>105</sup> ABC Radio National, *Australia Talks Back*, 'Queensland: Ten Years After Fitzgerald', 16 May 1999.

<sup>106</sup> Wanna (1998), pp 263–64.

<sup>107</sup> *Crime and Misconduct Act 2001* (Qld).

<sup>108</sup> *Courier-Mail* 16 November 2005. See also CMC, Annual Report, 2004-5; 'Top Crime Fighter Robert Needham and CMC Nobbled', *Courier-Mail*, 4 April 2009.

<sup>109</sup> *The Australian*, 30 July 2009.

## Conclusion

The Fitzgerald Report was unique among inquiries of its kind in its attempt to relate the particular instances of corruption and maladministration that it uncovered to systemic problems in the wider system of government in which these particular instances occurred. The report was also notable for the way it recommended that new extra-parliamentary institutions such as the EARC and the CJC be given the tasks of undertaking further inquiries to identify specific measures to address the systemic problems in Queensland's system of government that encouraged corruption and maladministration.

However, the Fitzgerald Inquiry's recommendations did not go far or deep enough. Although Fitzgerald recognised the capacity of Queensland governments to use their 'dominance in the Parliament' and their 'control of public resources' in order 'to stifle and neuter effective criticism',<sup>110</sup> little if anything was proposed to counter the profound advantages of incumbency. Twenty years after Fitzgerald, it is still true that Queensland governments are able to use their 'control of Parliament and public administration to manipulate, exploit and misinform the community, or to hide matters from it'.<sup>111</sup> The EARC made great strides in its time, but was soon disbanded. FOI laws were introduced but undermined. The CJC and its successors have been in a state of constant tension with successive governments. Parliamentary practice has hardly changed and the public service seems to be more politicised than ever. Whistleblower protections have not entirely eliminated a culture of fear and intimidation within the public service, as the Davies Royal Commission demonstrated. And Queensland governments still show themselves to be unconscious heirs of a political culture in which the separation of powers is only dimly understood at best.

This last point is well illustrated by the attitude the Queensland government has taken to proposed reforms to the state Constitution. In 2000, the Queensland Constitutional Review Commission recommended, among other things, that the Queensland Constitution be approved and adopted by the people of Queensland in a referendum.<sup>112</sup> The objective of the commission was that this would provide a platform for constitutionally entrenching the state *Constitution Act* to place it beyond the immediate control of the government. The Commission recommended that the 'principal elements of the State's constitutional structure' be amendable only by referendum and that the remaining text of the Constitution be amendable only through a special process involving a prescribed delay between the First and Second Readings of any Amendment Bill and a report on the Bill delivered by the LCARC.<sup>113</sup> In response to a report on this proposal by the LCARC,<sup>114</sup> however, the government decided not to accept the recommendation. One of the reasons given by the government was that constitutional entrenchment would 'prevent a government

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<sup>110</sup> Fitzgerald (1989), p 123.

<sup>111</sup> Fitzgerald (1989), p 123.

<sup>112</sup> QCRC (2000) ('QCRC Report').

<sup>113</sup> QCRC (2000), pp 24–25, 78–79, 93 (Recommendation 12.3).

<sup>114</sup> LCARC (2003).

from moving quickly to make machinery-of-government amendments if required'.<sup>115</sup> Without any hint of embarrassment, the government referred to itself — the government — as needing to make these 'machinery-of-government amendments', overlooking the fact that it is the parliament, not the government, that has the legitimate power to make alterations to the Constitution. Indeed, the concern of the government that entrenchment would 'prevent a government from moving quickly to make machinery-of-government amendments if required' elided the very reason why constitutional provisions are entrenched — namely, in order to ensure that governments *cannot move quickly* to make what are presented as merely 'machinery-of-government amendments', but which actually alter the fundamental balances and limitations of power preserved by the Constitution.<sup>116</sup>

Essentially the same outlook was recently seen in the government's response to submissions to its recent *Integrity and Accountability Green Paper*. Although the government received numerous submissions calling for the reintroduction of an upper house as a means of improving government accountability and strengthening the parliament, the government dismissed these submissions in a single paragraph, which concluded simply that 'the Queensland Government will not be pursuing this option'.<sup>117</sup>

The problem was — and remains — that Queensland's political culture is fundamentally shaped by the capacity of the executive government to dominate the state's unicameral parliament. Without an upper house, successive Queensland governments become used to controlling and manipulating parliament and lose virtually all sense of any separation between the two institutions. As a consequence, Queensland's constitutional and political system has been unable to sustain the Fitzgerald mechanisms that were grafted on to it. Although the Fitzgerald Report ushered in many changes to Queensland's public administration, parliamentary procedures and electoral processes, the failure to address the constitutional framework within which these institutions operate has meant that democratic governance has hardly improved, regardless of which party has held office. The array of serious problems now coming to the surface concerning corruption, political lobbying, special deals and conflicts of interest can be traced in large measure to the underlying problem that the executive government in Queensland dominates Queensland's unicameral parliament.

The re-establishment of a democratically elected upper house would be no immediate panacea, for the political culture in which these problems have thrived is well entrenched. In addition, as we have noted, the performance of Australia's various upper houses presents a mixed picture. But an upper house that is not so easily controlled by governments would help to make them more responsible and accountable — through its own investigatory and inquisitive powers, as well as through its capacity to fortify and support the findings, recommendations and determinations of Queensland's extra-parliamentary institutions. An upper house would give oppositions more opportunity to scrutinise and evaluate government proposals, thereby not only subjecting the government to closer examination but

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<sup>115</sup> Queensland Government (2004).

<sup>116</sup> See Aroney (2010).

<sup>117</sup> Queensland Government (2009), p 11.

also giving oppositions more opportunity to commend themselves to voters as viable alternative governments. As Tony Fitzgerald recently reminded us, long-term incumbency tests the resolve of a government to remain free of the taint of corruption, political manipulation and maladministration. And an upper house, as the evidence from the other Australian states seems to suggest, enables oppositions to challenge government incumbency more effectively.<sup>118</sup>

There are inherent constraints on any commission of inquiry process, and the Fitzgerald Report is no exception. Public inquiries are appointed by and report to executive government. As temporary bodies, their impact is inevitably affected by the political environment within which they must operate, and their proposals are often overtaken by new pressures and unexpected events. It should come as no great surprise, then, that the Fitzgerald Report has achieved so little of substance, despite all of the procedural changes that it initiated. The political culture in Queensland has remained essentially the same, not least because the state's constitutional and political framework has made it all too easy for executive governments supported and sustained by disciplined political parties to continue to sideline those aspects of the Fitzgerald agenda inimical to their interests.

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<sup>118</sup> Aroney (2008).

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