

Features

Where is our rights charter?

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Fitzgerald Inquiry

There is unfinished Fitzgerald-reform business, writes Terry O'Gorman

The police portfolio is by far the worst for not consulting

QUEENSLAND'S governance and police practices are undoubtedly better and more accountable than before the landmark 1987-89 Fitzgerald royal commission was set up.

But there is no room for complacency. Twenty years on there is a need to look at reform mechanisms to ensure the Fitzgerald-inspired reforms continue to deliver a better outcome for Queensland.

While parliamentary procedure has improved with the post-Fitzgerald introduction of a system of parliamentary committees, the dominance by the executive over Parliament remains a major problem, especially with the absence of an upper house to critically examine and review legislation.

The Scrutiny of Legislation Committee was established in the early 1990s to ensure that legislation drafted by the Government was consistent with civil liberties principles.

The committee was to report to Parliament where new legislation infringed on important civil liberty principles.

While this committee does a great deal of hard work, the concept has been unsuccessful. The state government, especially where it has a large majority, can and does frequently ignore the committee's recommendations.

Something more effective is needed to ensure legislation complies with fundamental civil liberties principles. The solution is a Charter of Rights which gives the independent courts the power to declare a particular piece of legislation offends fundamental civil liberties precepts.

Freedom of Information legislation is now a pale shadow of what was intended to be a new system of open government after the Fitzgerald report. The Bundaberg Hospital Commission of Inquiry noted a culture of concealment, with successive governments since 1992 misusing the Freedom of Information Act to enable potentially embarrassing information to be concealed from the public.

Legislation to address miscarriages of justice and to appropriately and fairly compensate those who are wrongly convicted is now well overdue. The UK Government eight years ago found it necessary to introduce a set of laws to deal with this problem and the Criminal Cases Review Commission which it has established has been very successful in rectifying miscarriages of justice which otherwise would have gone unaddressed.

The current system of compensating victims of miscarriages of justice at the whim of the government of the day is antiquated and wrong. An effective system of addressing miscarriages of justice by a body independent of the government of the day is well overdue for implementation in this state.

Fitzgerald recommended wide-ranging consultation before law and order legislation is introduced into Parliament.

Current consultation practices have gone backwards in the past 10 years. The police portfolio is by far the worst in this regard. With police legislation under the current minister there is little or no consultation outside the Queensland Police Service.

External oversight and supervision of police power abuse has regressed since the Crime and Misconduct Commission handed the investigation of complaints against police back to the service.

While the CMC retains the investigation of police corruption it ineffectively monitors the police investigating the police regime in relation to other complaints against police.

Witness in this regard the CMC monitoring of complaints against police in the aftermath of the arson of the Palm Island police station in November 2004.

Despite the stinging coronial criticism of police removing identities and wearing balaclavas in the post-arson raids on the island and the investigation of police by their police friends, the CMC "monitoring" of the serious complaints against police arising out of the Palm Island scenario was a limp-wristed recommendation for the hardy perennial of more police training.

The CMC increasingly is unable to resolve its conflicting priorities of being a super police force in relation to organised crime, using its standing permanent royal commission powers with its oversight role over the QPS with the possible exception of investigating police corruption. The CMC police oversight role is on the way to becoming moribund.

Allegations of police leaning on and threatening suspects before the police station interview tape is turned on is becoming an increasing problem.

The solution is simple. Mandate police to tape record suspects from point of first contact out in the field. The police frequently do it when it suits them.

Finally, the apparent recent practice of a number of city and suburban CIB squads referring suspects to a small coterie of criminal defence lawyers is a problem which must be confronted.

Legal profession rumours of frequent open-tab boozy lunches being given to these squads in return for large-scale referrals need investigation. Fearless and independent advice to clients by lawyers who depend on large-scale police referrals is compromised.

Terry O'Gorman is a Brisbane criminal lawyer and president of the Australian Civil Liberties Union. There is a symposium on the Fitzgerald reforms at Parliament House, Brisbane, tonight