

# Submission to Queensland Government Integrity and Accountability Green Paper

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September 2009

# **Integrity and Accountability in Queensland**

## **Submission by Associate Professor Nicholas Aroney and Professor Scott Prasser**

### **1. Introduction: Some basic principles**

The *Integrity and Accountability in Queensland* Green Paper poses the following broad question: how can Queensland's integrity and accountability framework be improved and strengthened? The Government has invited comments and suggestions on any aspect of the integrity and accountability framework as it functions in Queensland.<sup>1</sup> This submission has been prepared in response to this request. While welcoming the Green Paper, our submission highlights certain fundamental differences between the specific options outlined within the Green Paper and the ways in which we submit that accountability and integrity can best be improved in this State.

Some basic principles and assumptions underlying our submission include the following:

- While across most modern democracies there has been a growing complaint that Executive Government is too powerful and dominant, the problem is especially persistent and acute in Queensland, for reasons ultimately traceable to its unicameral parliamentary system and the resulting capacity of the Government of the day to manipulate the procedures, agenda, deliberations and final decisions of the Parliament in a manner favourable to the Executive.
- Many of the changes initiated under the umbrella of the Fitzgerald Report's reform agenda have been significantly less successful than originally hoped. Contrary to the claims indicated in the Green Paper, the Fitzgerald reforms have failed to penetrate deeply into the underlying political culture in Queensland by reforming fundamental attitudes to democratic governance.
- Good and effective governance, while necessarily depending upon the power of the Executive Government to make decisions, needs to be tempered by democratic procedures and institutions through which alternative views can be heard, Government decisions challenged (prior to their often fateful implementation) and ongoing evaluation and review of policies and program performance can occur – openly, regularly and relentlessly.

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<sup>1</sup> Queensland Government, *Integrity and Accountability in Queensland: Discussion Paper* (August, 2009), p. 3.

- Genuine progress concerning government accountability and integrity needs to be focussed upon the role of our democratic institutions, principally the Parliament, and not simply rely upon external mechanisms that themselves are all too easily manipulated and compromised by Executive Government interference. Queensland will only cease to be an ‘elective dictatorship’ when the failings of our current constitutional arrangements and the weaknesses of our key democratic institutions are addressed, directly and honestly. Westminster systems of government have delivered much in terms of good government, but they need to be modernised so that the democratic principles that underlie their legitimate operation can be put into practice in the context of the complex and diverse societies in which they operate.

## **2. Key issues**

### ***2.1 External mechanisms or improved democratic institutions?***

The main thrust of the Green Paper is to concentrate upon various extra-parliamentary accountability and transparency mechanisms, such as the Crime and Misconduct Commission, the Integrity Commissioner, the Ombudsman, freedom of information laws and other codes of conduct regulating ministers and public service employees. However, as the Green Paper acknowledges, a civil society depends on public trust in its democratic institutions.<sup>2</sup> Yet none of the external institutions and processes of review mentioned and so highly praised<sup>3</sup> in the Green paper are democratic bodies, and none of them are reliably monitored by the Parliament given the reality of Executive Government control of that institution.

There are three main reasons why these external mechanisms of review alone have only a limited capacity to enhance accountability and integrity in government. First, as unelected bodies, their functions and powers must be inherently limited by statute. Second, their scope of operation is focussed on particular outbreaks of corruption and incidents of maladministration which, even if tackled, are usually a reflection of wider systemic problems. Third, the Executive Government controls both appointments to and the resources and powers of these bodies. While there are sensitivities concerning any overt manipulation or ‘stacking’ of such bodies, there are numerous examples of where the Executive Government has sought, often with success, to reduce the resources and powers of these bodies or to make appointments of persons who are more amenable to the Government’s agenda or point of view. Of course, this is not a problem that occurs only in Queensland, but Queensland’s particular political culture and constitutional arrangements make the problem more pronounced.

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<sup>2</sup> Ibid.

<sup>3</sup> See Green Paper, Table 1.1, p. 4.

Problems of Executive Government interference in Queensland in even that most traditional of external watchdogs, the Auditor-General, especially concerning areas to be investigated and assessment of his performance by other government departments, highlight the vulnerability of external review bodies when faced with determined Executive Government action.

Queensland's anti-corruption bodies, the Criminal Justice Commission (CJC) established as a result of the 1989 Fitzgerald Royal Commission, and its successor, the Crime and Misconduct Commission (CMC), although much vaunted by the Green Paper, have had a long history of difficulties in performing their watchdog functions. Under successive Labor and Coalition administrations Executive Governments have manipulated these bodies through the appointment of chairs, exercising control over their scope of activities, reducing resources and modifying powers. Critics have argued that the CMC has delegated too much of its investigatory activities to government agencies and become 'neutered ... and remains in a castrated state.'<sup>4</sup>

The lack of genuine bipartisan consultation in the appointment of chairs to these vital agencies further underscores the problem. Such external anti-corruption bodies, dubbed the 'fifth wheel' of modern government, do not sit well with the 'winner takes all approach to government' which prevails in Queensland. Moreover, parliamentary committee oversight, especially when concerned with disputes between the CJC or CMC and the Government, too often decline into a simple contest of party politics which in Queensland is inevitably resolved in favour of the Executive Government through its control of the Parliament and its committees.

Regrettably, it was on this very point that the much praised Fitzgerald Report missed the mark. Although the Report highlighted the fact that corruption could only flourish in conditions of poor accountability and integrity in government, its prescriptions did not get to the heart of the matter, which was (and remains) executive dominance over all aspects of government.

Regardless of the range of worthwhile reforms that have subsequently been introduced in and through the Parliament, public service and external review bodies, Queensland's unicameral Parliament is too easily manipulated by the party that forms the Government. This enables the Executive to exercise control over every aspect of government, extending even to the operation of Queensland's external review agencies. Consequently, those agencies are hamstrung in their ability to strike at the root of a corrupt political culture within a Government.

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<sup>4</sup> Tony Koch, *The Australian*, 30 July 2009.

**Submission 1**

The Parliament of Queensland is the primary and most important ingredient in Queensland's integrity and accountability framework, the very core of Queensland's democratic system. The health of our society centrally depends upon public confidence in the capacity of the Parliament to provide a mechanism of democratic accountability for the Executive Government. Seeking to improve government accountability must address the issue of executive dominance and focus on where the problem lies and where democratic practice meets institutional structures – namely the Parliament. There can be no effective counterweight to Executive Government dominance by extra-parliamentary bodies alone, very little improvement in accountability, and no real integrity in Government unless accompanied by improved parliamentary oversight and restraint of Executive Government to ensure that such bodies can operate freely and effectively.

## ***2.2 Democratic Accountability and the Separation of Powers – The Role of Parliament***

The Green Paper rightly acknowledges that democratic government, including the separation of powers, ought to be the keystone of the integrity framework in Queensland. Identifying the key tasks of the legislature, the executive and the judiciary, the Green Paper points out that the legislature ‘makes the laws and, through its proceedings and committees, holds the executive to account.’<sup>5</sup> However, the Green Paper avoids any major discussion of the present operation and effectiveness of the Parliament. This is remarkable given the fact that the Parliament is the primary mechanism by which Governments are held to account in our democratic system. But the Green Paper is written as if Parliament does not really count. This tendency to overlook the fundamental role of Parliament is all too characteristic of the basic flaw in Queensland’s integrity and accountability framework. The external review mechanisms discussed in the Green Paper cannot operate effectively and independently from Executive Government unless they are linked to clear parliamentary oversight that is itself free from excessive Executive Government manipulation. Otherwise, such bodies are just facades of accountability without any real support structures or foundations.

Queensland Parliament has a number of problems and deficiencies that must be addressed in any attempt to improve accountability and to restore citizen respect for elected officials and the very system of government in which they operate. These problems have been well chronicled and assessed by others and include:

- lack of sitting days (averaging less than 50 a year);
- outdated question-time arrangements that prevent probing of ministerial activities;

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<sup>5</sup> *Ibid.*, p. 7.

- rushed legislation (eg overnight debates on important issues like local government amalgamation in 2007 and more recently concerning privatisation of government enterprises);
- a poorly performing parliamentary committee system assessed by one commentator as having little real impact on government;<sup>6</sup>
- lack of separation of powers between executive government and the legislature.

The fact that a revised parliamentary committee system in Queensland was announced by the Premier the day before Parliament resumed after the March election, entirely without consultation with the Opposition, highlights the problem. Committees appear to be nothing more than an extension of the Executive Government and another 'prize' to be used by the Government for Government ends.

Fundamental to the capacity of Parliament to act as a check and balance upon the Executive Government is the extent to which Parliament and its committees consist of personnel who are distinct from and independent of the Executive. This is the basic principle underlying the separation of powers doctrine. In Queensland, however, the Executive and the Parliament are far more closely identified and intertwined than in the other Australian jurisdictions.

One of the important factors here is the size of the Queensland Ministry compared to the size of the Parliament. The Queensland Parliament consists of 89 members. Currently, the Labor Party holds a majority with 51 seats. At present, there are 18 Ministers and 9 Parliamentary Secretaries. In other words 30 per cent of the Queensland Parliament is personally identified with Executive Government – the highest proportion of any State. (At a Commonwealth level the corresponding proportion is 18.5 per cent.)

The size of the Ministry in Queensland also means that a majority of members of the Labor Party hold ministerial positions. In these circumstances, the capacity of Government backbenchers and the Opposition to influence the deliberations of Parliament and its committees when scrutinising the Executive is highly limited. The twenty-seven members of the Ministry themselves constitute a majority within the fifty-one member Labor Caucus; and through its control of the Caucus, the Ministry has the capacity to determine the vote within the Parliament. Parliament is thus effectively controlled by the Ministry. The Executive Government does not just control the Parliament in Queensland, it has effectively taken it over.

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<sup>6</sup> Janet Ransley (2008) 'Illusions of reform: Queensland's Legislative Assembly since Fitzgerald,' in Aroney, Prasser and Nethercote (eds), *Restraining Elective Dictatorship: The Upper House Solution?* (Perth: University of Western Australia Press, 2008), pp. 248-261.

A second important factor here is that despite the legal requirement that the statutory committees of the Parliament are bipartisan in composition, the governing party has a casting vote through the chair of each committee, and as a consequence, the Executive Government routinely controls the agenda of and the reports issued by the committees.

In Queensland, the impact of these two factors is exacerbated by the fact that there is no upper house. It is to be expected within Westminster systems that a Government will have the support of a majority of members of the lower house of Parliament and thus usually be in a position, through party discipline, to determine the decisions made by the lower house and its committees. However, when there is only one house of Parliament, as in Queensland, this means that the Government is routinely able to determine the decisions made by the entire Parliament, and not just one of its houses.

In the Commonwealth and the other States – in sharp contrast to Queensland – Parliament consists of two houses and the electoral systems usually result in governing parties not holding a majority of seats in the second chamber. In these circumstances, the Government does not have control over the entire Parliament and its committees. Typically, power within Australia's second chambers (and their committees) is shared among Government, Opposition, cross-bench and independent members. This enables upper houses and their committees to exercise legislative power and hold governments to account in a manner that is independent of the Government.<sup>7</sup> This secures, in practical terms, a vastly more effective separation of powers than occurs in Queensland.

#### **Submission 2**

**Despite the changes to the parliamentary committee system introduced following the Fitzgerald Report and notwithstanding the changes initiated in May 2009, the Queensland Parliament and its committees are functioning very poorly as instruments of democratic accountability for the Executive Government, both in absolute terms and when compared to the performance of the Parliaments of the Commonwealth and the other States.**

**There needs to be:**

- **a genuinely bipartisan review of the parliamentary committee system by Parliament itself;**
- **provision for Opposition members to chair certain selected committees;**
- **appointment of committees to investigate key areas of State government expenditure such as health and education and to ensure there is more citizen engagement in the issues and policy development in these areas.**

<sup>7</sup> Compare Bruce Stone, 'Changing Roles, Changing Rules: Procedural Development and Difference in Australian State Upper Houses' (2005) 40 *Australian Journal of Political Science* 33 and Brian Costar, 'Reformed Bicameralism? The Victorian Legislative Council in the Twenty-First Century' in Aroney, Prasser and Nethercote (eds), *Restraining Elective Dictatorship: The Upper House Solution?*, p. 196.

### **2.3 The case for an upper house**

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>8</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>9</sup> 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 unconscious heirs of a political culture in which the separation of powers is only dimly understood at best.<sup>10</sup>

The problem was and is that Queensland's constitutional and political system has been unable to sustain the Fitzgerald mechanisms that were grafted on to it. Queensland's political culture is fundamentally shaped by the capacity of the Executive Government to dominate the State's unicameral Parliament. Although the Fitzgerald Report ushered in many changes to Queensland's system of 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 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.

We acknowledge that 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. Moreover, the performance of the Australian upper houses presents a mixed picture. But the reestablishment in Queensland of 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

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<sup>8</sup> Fitzgerald Report (1989), p. 123.

<sup>9</sup> Fitzgerald Report (1989), p. 123.

<sup>10</sup> See Scott Prasser and Nicholas Aroney (forthcoming, 2009) 'Real Constitutional Reform after Fitzgerald: Still Waiting for Godot', *Griffith Law Review*, 18, 3.

to closer examination but 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>11</sup>

### **Submission 3**

**The Government ought to take the principled stance of initiating a debate over the reintroduction of a democratically elected Legislative Council as a means of re-establishing the separation of powers in Queensland and enabling Parliament and its committees to more effectively scrutinise Executive Government decisions and hold ministers to account.**

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<sup>11</sup> Nicholas Aroney (2008) 'Four reasons for an upper house,' *Adelaide Law Review*, 29, 2, pp 205-246.