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C/15/7613

22 JAN 2015

The Hon. T. H. Smith QC
Chair
Accountability Round Table

Dear The Hon. T.H. Smith QC,
Dear Mr Smith

Thank you for your email dated 13 January 2015 to the Leader of Opposition, the Honourable Anastacia Palaszczuk MP, seeking views on aspects of democratic government that are of particular concern to your members, and enquiring what action the Labor Party proposes in the new Parliament. I furnish this response on behalf of the Labor Opposition.

I note there are four issues upon which you request comment, and I will address each in turn.

1. CHANGES TO THE CMC

Requirement for complaint by statutory declaration

The first area of concern is the effectiveness of Queensland's anti-corruption body, which has, as you point out, been diminished by recent legislative changes. You have singled out a number of the amendments for specific mention. The Opposition was also concerned about the requirement for complaints to be made by way of statutory declaration.

In April 2013, the Attorney-General invited the Parliamentary Crime and Misconduct Committee to comment on the recommendations contained in the report of the Independent Advisory Panel's review of the Crime and Misconduct Act and related matters thereto (Callinan/Aroney Report). In its response to the Attorney-General, the PCMC made the following submission:

"The Committee considers that this recommendation, if it proceeds with the definition as set out in recommendation 3D, could lead to the CMC not accepting anonymous complaints. The Committee considers that a complainant should not be required to submit a statutory declaration with a complaint to the CMC.

The Committee does not consider that the requirements for a complaint to be accompanied by a statutory declaration will reduce vexatious or intractable complaints. In the experience of this Committee, some who feel that they have a genuine complaint to make to the CMC, despite that complaint being baseless, will not be deterred by the requirement of providing a Statutory Declaration. Nor will it deter those persons who for a range of reasons do not have the requisite understanding of the requirements.

Conversely, the Committee considers that this requirement may deter a person who holds a genuine complaint which could expose corruption but feels vulnerable in making that complaint due to the requirement to sign a Statutory Declaration and disclose their name.

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This response represented the unanimous view of the PCMC, and was supported by both Government and non-Government members of the Committee. The reasons given are salient. It is unlikely that the requirement will have the desired effect.

Persons who genuinely believe that theirs is a legitimate complaint, will be of that view regardless of whether the Commission holds the same view, and will not be deterred from making a complaint by the requirement for it to be accompanied by a statutory declaration.

The requirement for a statutory declaration was also opposed by the CMC itself. In its submission to the Committee, Dr Levy, on behalf of the Commission, said:

"The CCC also receives anonymous complaints. For example, in 2012-13 seven percent of complaints received were from anonymous sources. Examples of important investigations resulting from an anonymous complaint have included the \$16 million Health fraud matter, the investigation into the alleged misuse of public monies and a former ministerial adviser, and the investigation and prosecution of Gordon Nuttall.

Based on its experience, the Commission believes that the strict wording of this clause may inhibit the CCC's ability to effectively investigate some complaints of serious corruption and that it would be prudent for it to retain some flexibility in this area."

A person with a genuine complaint, however, who might be afraid of retaliation for having made a complaint, or who, as a lay person, is not confident of their capacity to fully comprehend the requirement for making a complaint, may be deterred from making what could in fact be a very well-founded complaint about a very serious issue of corrupt conduct.

The Bill sets out examples of exceptional circumstances, which includes fear of retaliation for making the complaint in relation to the person's employment, property, personal safety or well-being. However, it only refers to 'the person' and doesn't include retaliation against a family member or other person. It also requires the Commission to determine whether the complaint needs to be made by statutory declaration.

It is difficult to imagine how one might make an approach to the Commission for the purpose of having the determination made as to whether a statutory declaration is required without exposing oneself to risk of the exact dangers that one fears. The approach cannot be made anonymously, or there would be no way of the commission communicating their decision on the issue.

The likelihood of the perceived ill being negated is far outweighed by the likelihood that legitimate complainants might be discouraged, and therefore this requirement is neither warranted nor beneficial. Additionally, in no other state or territory, or in the Commonwealth, is a complaint to an integrity body such as the CMC required to be made by statutory declaration. A future Labor Government will be removing this requirement, and returning the complaint procedure to that which previously existed prior to the 2014 amendments.

Restriction of definition of 'corrupt conduct'

The Labor Opposition was also opposed to the change in definition of what type of conduct could be investigated by Queensland's anti-corruption body. Early in 2013, the Callinan/Aroney Report was handed to the Premier, the Honourable Campbell Newman MP, recommending that ethical standards units within government departments be abolished.

The report also found the vast majority of complaints to the CMC were "trivial, vexatious or misdirected" and there needed to be both a reduction in the number of complaints made to the corruption watchdog and a deterrent to making "baseless" complaints. These recommendations led to the requirement for complaints to be accompanied by a statutory declaration, and the narrowing of the threshold of what constitutes 'official misconduct'. The definition was then changed to 'corrupt conduct' to reflect this change.

Additional steps were also taken to reduce the number of matters referred to, and investigated by, the CMC. These included;

- raising the threshold of when public officials are to notify the new CCC of suspected corrupt conduct from 'suspicion' to 'reasonable suspicion'; and
- expanding the use of the section 40 directions issued by the new CCC to agencies to ensure only the more serious corrupt conduct matters are referred to the CCC.

The devolution of what were then deemed matters of insufficient gravity to be investigated by the CMC to the relevant government departments was fraught with problems, because the ethical standards units were significantly reduced or abolished in most agencies. Departments are now required to undertake the investigations previously carried out by the CMC without a specialist agency to carry out this work.

What added to the concern about this move was the concurrent removal of the commission's responsibilities for the 'prevention' of corruption in units of public administration. The Act previously provided that the Commission had a prevention function which was to help prevent major crime and misconduct. The Bill removed 'helping to prevent' misconduct from this function. This responsibility was transferred to the Public Service Commission. It is important that there be an ongoing commitment to preventing misconduct and corruption within units of public administration.

The Callinan/Aroney Report identified that, in the view of the authors, the prevention functions were 'too broad and ill-defined'. They recommended 'that they be replaced by a more specific provision to this effect:

When, in the course of carrying out its functions under this Act, it comes to the notice of the Commission that conduct in the public sector may be improved, the Chairperson may notify the appropriate manager in the relevant part of the public sector of the possibility of improvement and ways and means of improvement.

Recommendation 4 of the Callinan/Aroney Report is also very clear in its recommendation of removal of misconduct (or corruption) from the prevention functions of the Commission. As the Report says, '*The CMC's preventative function should cease, except for such advice and education as may be appropriate and incidental to matters uncovered or found by the CMC in the course of an investigation.*'

The PCMC, in its response to the Callinan/Aroney Report, accepted this proposal with reservation. It said, '*The Committee's reservation stems from a lack of understanding of the implications of such a transfer to the Public Service Commission. The Committee notes that the Panel's recommendation does not contemplate the CMC's application of those prevention functions to universities, and more importantly, to local government. The Committee is aware that a large proportion of complaints to the CMC concern local government and consider that prevention advice in this area should continue.*'

There is a concern about the impact that this amendment will have on the CMC's capacity to provide preventive advice to local government and universities. As these bodies do not come within the jurisdiction of the Public Service Commission (PSC), the transfer of these duties to the PSC will not cover these important units of public administration.

The explanatory notes to the Bill did not provide any reason for the amendment other than that 'Callinan/Aroney recommended' it. There is also no further explanation provided in the Attorney-General's introductory speech. The legislation establishing almost all other integrity bodies within Australia contain a provision that they have a 'preventive' role in relation to corruption.

The Labor Opposition did not support these amendments. Nor did the submission made by the Bar Association of Queensland. As it said: '*the Association is concerned by the following proposed changes: The amendment to s. 23 where the preventive function of the commission now only relates to major crime and no longer relates to misconduct or corruption, as such, in the public sector.*

The Labor Opposition did not support the amendments in the Parliament when they were made, and continues to seek to have them reviewed. A future Labor Government will replace the corruption watchdog's preventative role in relation to corruption. A Labor Government would also ensure that the CMC's capacity to provide preventive advice to local government and universities, as these bodies do not come within the jurisdiction of the Public Service Commission (PSC).

2. POLITICAL DONATIONS

You express concern that the State lacks appropriate mechanisms for ensuring that the raising of funds by political parties does not lead to anti-democratic, if not corrupt, outcomes.

The previous Labor Government wanted to ensure openness and transparency in political donations, and introduced a \$1000 disclosure threshold to ensure that Queenslanders would know anyone who donated \$1000 or more to a political party. The Labor Party considers that this is an appropriate level of disclosure, and vehemently opposed the move by the Newman LNP Government to raise the threshold to what is now \$12,800.

This amendment was strenuously opposed through the media and in the Parliament by the Labor Opposition, and a future Labor Government will return the threshold to \$1000. Donors have also been put on notice that this change will be retrospective, so that all donations made between when the LNP changes were made and when a future Labor Government reinstates the previous threshold will be disclosable.

You have also mentioned the issue of continuous donation disclosure, particularly during election campaigns. Under the Labor Government's \$1000 disclosure threshold, this would be logistically impossible, especially during an election campaign. However, one of the other changes to the previous Labor Government's laws made by the Newman LNP Government was to remove the requirement to report Special Reporting Events, such as donations over \$200,000. Under the previous Labor Government's laws, these donations were required to be reported immediately. The LNP amendments removed this requirement.

A future Labor Government would restore this requirement, meaning that large donations would need to be immediately disclosed, particularly during an election campaign. This would mean that members of the public would be aware when large donations have been made to any political party, and can make a judgment on how they intend to vote based on that information if they wish.

Another request you have made is in relation to the holding of an open and independent inquiry into political donations in Queensland. A future Labor Government would welcome such an inquiry, and would expressly welcome any input from organisations that feel they have any contribution to make in relation to how the electoral disclosure laws have been operating, if and how they have failed, and what improvements could be made.

3. RIGHT TO INFORMATION

As you have acknowledged, Queensland has the nation's best Right to Information legislation. Following a review of the Freedom of Information Act, extensive amendments were made by the previous Labor Government to ensure even greater openness and transparency in relation to Government decision-making processes.

From 1 July 2009, the *Right to Information Act 2009* replaced the *Freedom of Information Act 1992* and is part of a broader "push" model of greater proactive and routine release of information. The *Right to Information Act 2009* (the RTI Act):

- gives you a right to apply for access to documents held by government agencies and Ministers.
- requires each government agency to publish a publication scheme on its website which may include an online disclosure log of documents that have been released in response to Right to Information applications

- establishes the Information Commissioner and Right to Information Commissioner to oversee Right to Information in Queensland

The RTI Act applies to:

- Queensland Government departments
- Ministers and Parliamentary Secretaries
- local governments
- public authorities
- certain government-owned corporations

In November 2012, the Attorney-General and Minister for Justice, the honourable Jarrod Bleijie MP, announced that a review of the Right to Information Act was currently underway, saying that too much scrutint is scaring people away from becoming politicians.

Mr Bleijie was quoted in an article in The Courier-Mail newspaper, as saying, "*What all this has done over the last few days, it's going to be a challenge in the future if this is the way we're going to get people to actually want to be politicians,*" after his former Cabinet colleague, Mr Bruge Flegg MP, resigned after his former advisor leaked emails between the former Minister and his son sent from personal email accounts.

In relation to the review, Mr Bleijie said Premier Campbell Newman's plan for an open government website, posting all non-confidential documents such as statistics would greatly reduce the need for RTI. The review would also investigate the cost and scope of the RTI Act, and extend it to capture information within the Office of the Opposition.

Most disconcertingly, the Attorney-General said that abolishing the *Right to Information Act* was "highly unlikely" but changes would be introduced as part of his review. Whilst "highly unlikely", the Attorney-General was not prepared to go so far as to rule out abolishing the Act.

Despite announcing that the review of the Act was already underway in November 2012, no report has been released, and no further insight has been available from the Attorney-General or the government in relation to what changes, if any, are proposed for the Right to Information scheme.

Labor in government will ensure that the review of the *Right to Information Act 2009* has been conducted appropriately, and will conduct what further consultation is deemed necessary after examining the results of the review thus far. It will then complete the review.

4. COMMITMENT TO FITZGERALD PRINCIPLES

As government becomes larger and more sophisticated new challenges to integrity arise and government must be constantly vigilant to address them. In an organisation the size of the Queensland Government keeping check on the ethical culture is a complex challenge and one which cannot be taken lightly.

Queensland must be ever vigilant to ensure we have a government that lives up to the highest standards of integrity. To that end, Labor has committed to:

- Restore equal Government and non-Government membership to Parliamentary portfolio committees
- Restore the independence of the Parliamentary Crime and Corruption Commission
- Restore the independence of the Speaker
- Restrict MPs' pay rises to that in the most recent Core Public Service EBA
- Enable anonymous complaints to the CCC
- Reinstate the CCC's preventative function
- Widen the definition of 'corrupt conduct'

- Ensure appointments of the Chair and CEO of the CCC have bi-partisan support
- Limit temporary appointments for the Chair and CEO of the CCC to three months, unless there is bi-partisan support
- Remove the discriminatory and unnecessary voter ID laws
- Lower the disclosure threshold for political donations from \$12,800 to \$1,000
- Require government advertising over \$1 million to be approved by a bi-partisan committee
- Remove gag clauses from non-government organisation contracts with government
- Introduce an open and transparent process for appointment of Directors-General
- Set the salary of the Chair of the CCC to be equal to that of a Supreme Court Judge, with access to a judicial pension.

As a representative of the Labor Opposition, the Member for Rockhampton, Mr Bill Byrne MP, had the privilege of attending the 2014 lecture of the Tony Fitzgerald Lecture and Scholarship Program. At this lecture the Honourable Gerald Edward (Tony) Fitzgerald AC, QC sought all parties seeking election in Queensland to make commitments such as the following:

- The public to be fully and accurately informed promptly and not to be misled
- All government decisions and actions to be taken for the common benefit without regard to personal, political or other considerations
- All people to be treated equally with no person given special treatment
- All public appointments to be made on merit.

I note your letter seeks a specific commitment by all candidates for Parliament to adopt, endorse, and act as required by, Queensland's Public Sector Ethics Act and the Ministerial Code of Conduct. This would be by way of publicly committing to the Fitzgerald principles.

In a letter to The Australia Institute (The Institute) dated 19 January 2015, I made a commitment, on behalf of the Labor Opposition, that a future Labor Government will:

1. Govern for the peace, welfare and good government of the State;
2. Make all decisions and take all actions, including public appointments, in the public interest without regard to personal, party political or other immaterial considerations;
3. Treat all people equally without permitting any person or corporation special access or influence; and
4. Promptly and accurately inform the public of its reasons for all significant or potentially controversial decisions and actions;

The Institute advised that they would be publishing my response on their website.

Thank you for taking the time to write to the Leader of the Opposition requesting a response to your concerns. I trust the information I have provided will be of some assistance to you and your members. Please do not hesitate to contact me should you require any further information.

Yours sincerely



Hon Tim Mulherin MP
Deputy Leader of the Opposition