SUPREME COURT OF QUEENSLAND

Anti-Corruption Agency Conference
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Sofitel Hotel, Brisbane
"The scope for corruption in public life in 21st century Australia"

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I am very pleased to have the opportunity to address the conference. I welcome especially interstate and overseas participants. I am vitally interested in your work. That is because of the aggregation of three features: first, all citizens recognize the critical importance of integrity in public life, to the welfare and good government of the community and I am a citizen; second, as head of the third branch of government in this State, I have a responsibility to monitor and ensure high standards in that regard in the court system especially; and third, I head the system which determines those charges of corruption which proceed to court.

I am also pleased the conference is occurring here in Brisbane. Queensland may claim substantial credential in this regard, with the Fitzgerald Inquiry two decades ago leading to the establishment of the Criminal Justice Commission, thence the Crime and Misconduct Commission. Despite some recent reflections, they are apt models, I suggest, for an anti-corruption agency.

I note that Tasmania is moving towards establishing an independent anti-corruption agency, which will leave Victoria and South Australia as the only States without one. While not inexpensive to maintain, these bodies, armed with coercive interrogative powers, play an indispensable role in the independent monitoring of the probity of the public sector.

Earlier in the year, I addressed newly elected members of the Queensland Parliament. It is an established custom, here, for the Chief Justice and the Chief Judge to be invited to make that contribution, which we value. In the course of that, I suggested a feature common to the three branches of Government, the judiciary, the legislature and the

executive: and that is dependence on public confidence, which is an inherently fragile commodity.

Politicians are regrettably easy targets. Judges are targets, although with less regularity. In contemporary times, bureaucrats also are targets.

If the bullet is alleged corruption, the short-term inquiry will necessarily be painful for the target and the public; and should corruption be established, the long-term consequences for each will be corrosive if not catastrophic. For the target, it will most likely be catastrophic; for the public, most likely corrosive, because of diminution in perceptions of the institution of government. The recent parliamentary expenses issue aired so graphically in the United Kingdom provides a good illustration of those consequences.

Of course one significant difference between the legislative and judicial branches is that the former is elected, the former being accountable ultimately at the ballot box, and the judiciary in other ways. But the public confidence on which each depends, so that laws are obeyed and judgments respected, fundamentally assumes that the parliamentarian, the bureaucrat and the judge, will always be demonstrably honest in discharging the public function.

When Pontius Pilate asked "What is truth?" and did not wait for an answer, he confronted, on one view, a comparatively straightforward situation, though one fraught with universal and enduring significance. Some of us not infrequently assert that contemporary society has become extremely complex and sophisticated, so that what we term ethical issues are often difficult to resolve. I fear we may sometimes exaggerate the problem. The honest course, the incorruptible course, is most often fairly readily apparent.

Yet, we are reminded, modern conditions have led to such things as ministerial codes of conduct, published guidelines for ethical judicial conduct, codes of course for the public

service; parliamentarians and bureaucrats are guided by such entities as integrity commissioners; and ethicists adorn the corridors of academia. My own view is that these are a response to an acutely-felt need to demonstrate integrity, a need generated not by feelings of inadequacy within the public officer, but by the strength of public reaction when a public officer occasionally, and unfortunately, falls from grace. Especially with the vigilant and assertive media of 21st century Australia, the strength of that reaction is both enhanced and well-expressed.

The result, anyway, is that public officers are reminded, in black and white, of what, basically, they should appreciate anyway, as inherently honest human beings.

And so I suggest that we cannot credibly contend that behaving honestly and incorruptibly has become more difficult in this day and age. With the benefit of written guidelines in most high level areas, it has in fact become easier, in that one may check one's naturally inclined position against the collected wisdom of others.

What has probably changed, in the integrity landscape, is the extent of the opportunity to backslide. As we have seen with published levels of executive salaries and bonuses, the accumulation of money remains, with many, an all-consuming goal.

Present Australian conditions, notwithstanding the financial crisis, throw up many opportunities for the dishonest accumulation of resources.

The value of many Government contracts is astronomical, with kickbacks in one form or another an ever-present risk. Undercover police officers witness the generation of simply phenomenal sums from the manufacture and distribution of unlawful drugs, in this State amphetamines especially: the temptation to facilitate the crime will sometimes emerge.

With the popular focus on mind-altering drugs, the temptation faced by hospital workers may be substantial. The powerful tensions inevitable in correctional centres mean that a potential for corruption there will always be present. The conference programme also interestingly identifies slippage in tertiary institutions, through plagiarism: why plagiarism, at an anti-corruption conference? Sadly, it has a real public dimension.

When in the Court of Appeal we deal with applications for the admission of new legal practitioners, we require the disclosure of all matters which could bear upon fitness to practise. In many jurisdictions, the last decade has witnessed not infrequent disclosure of plagiarism at law schools. We have developed various responses, and I am told by the Law Deans that deterrence is working, and the extent of plagiarism decreasing. That is good, though the motivation should be honesty, of course, not fear of an impediment to admission. When, a decade ago, I came to appreciate the extent of academic dishonesty, I was frankly bemused – and greatly disappointed - that a prospective lawyer could conceive of cheating to acquire his or her basic qualification. The Enfield case represented as appalling apogée of dishonesty in the public arena.

There is capacity for corruption of some sort or other in all aspects of 21st century public life. And there is likewise always the tendency to disguise or excuse it, as with recent references in this State to "noble corruption", with the dishonest means said to be justified by the resultant criminal conviction: though I emphasize that unfortunate terminology has not been endorsed. I use the occasion to repeat my own condemnation, for what it's worth, of another piece of unfortunate jargon, termed the "recreational" use of unlawful drugs.

As more generally to the judiciary, some years ago, it was suggested Australian judges adopt an internationally generated code of ethical conduct which included the provision: a judge must not accept a bribe. You may be interested to hear that we declined, because we would not have wanted it to be thought that such an express admonition was

necessary for the Australian judiciary. Australians should have, and I believe have, confidence in the independence and incorruptibility of their judiciary.

Although, as I have suggested, the content of the obligation to discharge public office with integrity is enduring, the scope for temptation to depart from the absolute standard has clearly enlarged in recent decades, and there is a more publicised community interest in ensuring that public officers act with integrity. Those features of the modern situation also explain the development of anti-corruption agencies.

I mentioned at the outset our own Crime and Misconduct Commission, and offered it as a model for consideration elsewhere. One very efficient feature of our Commission is the breadth of its jurisdiction, in that it extends to the judiciary. Complaints of judicial misconduct which could, if established, warrant removal from office, may be investigated by the Crime and Misconduct Commission, subject only to the Chief Justice's managerial type approval of the proposed method – in the interests of ultimate respect for and preservation of judicial independence. In the course of my Chief Justiceship over the last 11 years, I have been involved to that extent with the investigation of a number of such complaints. The system has worked efficiently. I mention it now in the context of the Commonwealth Attorney-General's expressed interest in a national judicial complaints body. I have previously suggested publicly there is no need for Queensland affiliation with such a body, if it should eventuate notwithstanding constitutional difficulties in relation to the Federal judiciary, and my reason is that we already have an established mechanism here which works well.

The Queensland model has one distinctive feature of present relevance. Whereas in its present form the Commonwealth Attorney's proposal would have, I think, retired judges passing on the conduct of a serving judge, in Queensland the judgment is made completely independently of the judiciary, serving or retired. It is made by the Board of the Crime and Misconduct Commission. This reminds me of the consideration which led some

years ago to the rejuvenation of the solicitors' disciplinary regime in this State, taken from the Solicitors' Complaints Tribunal which comprised practising solicitors, to the Legal Practice Tribunal, comprising a Supreme Court Judge assisted by a practitioner and a lay member of the public. Doubt will be inevitable when the acceptability of the performance of a public officer is determined by his or her professional peers.

An important indicator of our Queensland's Crime and Misconduct Commission's commitment since its establishment are the many publications it has produced, including diverse and highly relevant guidelines and procedures which are useful tools in the creation and maintenance of a corruption free workplace.

One particular guideline to which I draw attention is the publication entitled *Fraud and Corruption Control: guidelines for best practice*. I do not propose to discuss the components of this manual as, no doubt, over the course of the conference you will discuss such approaches and methods in detail. But I will take you to the stated objective of these guidelines. That objective, as stated by the CMC, is to achieve "an integrated approach that includes proactive measures designed to enhance system integrity (prevention measures) and reactive responses (reporting, detecting and investigating activities)."

This is achieved through the CMC's "recommend[ation] [of] a best-practice control model comprising 10 key elements" involving: an agency-wide integrated policy; risk assessments; internal controls; internal reporting; external reporting; public interest disclosures; investigations; a code of conduct; staff education and awareness; and client and community awareness.

According to the CMC "[all ten] elements are interrelated, with each one playing an important role. Each element is covered separately [in the best practice model], but the importance of an integrated agency response is emphasised. No one element should be

considered in isolation. To produce the most effective outcomes, a fraud and corruption control program must be holistically planned and executed, must carry the full support of management, and must be universally promoted and accepted."

The focus on an integrated best practice model is to be commended. It is through developing agency-wide systems that a public sector culture of responsibility and the development of ethical workplaces can be fostered. It is everyone's responsibility within public sector agencies that, during the course of carrying out their duties, they remain vigilant for possible fraud and corruption. It is quite often the case that the senior manager is not in the best position to observe the fraudulent activity, but those in more junior roles are. In that sense, the organisational culture is one which must encourage those in the public service to come forward and disclose what they have seen without fear of reprisal.

I acknowledge that it may be a difficult thing to come forward and make that disclosure, and that competing considerations including loyalty issues (to an employer, client or colleague), or personal considerations (e.g. career progression) may prevail. That, to my mind, makes it all the more important that awareness is raised across the public sector by "promoting a positive reporting environment"[1] and that effective systems are established to handle public interest disclosures.

Now is not my opportunity to enter further upon matters of detail in relation to the Crime and Misconduct Commission in this State, or anti-corruption agencies generally. But there is one general observation I should add.

These agencies share an important feature with the judicial branch of government. Executive government must acknowledge and respect their independence, because that is what ensures the public confidence essential to the worth of their respective enterprises. Further, the independence of anti-corruption agencies entails a number of things:

resourcing them adequately; ensuring their statutory charter is responsibly upheld, which means periodic enhancement and other refinement, not to diminish the role, but to align it appropriately with its goal in contemporary conditions; and also importantly, not descending to corrosive public criticism where the outcome disappoints the government agency or officer.

Again drawing on my own judicial experience, courts and thereby the public have been the beneficiaries of moderate and appropriate government response, where court decisions on important issues have gone against the government, and that reflects executive government's respect for the doctrine of the separation of powers. Similar deference is relevant and important to the determinations of anti-corruption agencies.

It is right to acknowledge the appropriateness of the Queensland government's various responses to the work of our Crime and Misconduct Commission. A recent illustration, I respectfully suggest, was the response to the Commission's "Dangerous Liaisons" report into aspects of the Police Service.

Ladies and gentlemen, I am greatly impressed by the comprehensive care which has plainly informed the preparation of the conference programme, and the glittering array of highly qualified presenters. I am also impressed by the practical orientation of the programme, drawing on actual case experiences; including the prospectively very useful workshop programme.

Staff morale will feature at one of those workshop sessions. That prompts me to acknowledge the pressure upon agency officers. Those officers will frequently be working in an atmosphere which is highly-charged, politically or emotionally. Realizing the possible outcome, for target and public, will itself point up the immensity of that pressure in many

[1] CMC, *Handling a public interest disclosure: A guide for public sector managers and supervisors*, 2009, p13

cases. Members of the public, anxious for an early outcome, will not necessarily reflect upon the burden borne by the officers of the agency charged with the investigation.

I imagine professional counselling is available. You may be interested to know that a confidential professional counselling service has in recent years been provided for certain participants in the criminal justice process subject sometimes to considerable pressure, namely jurors, and indeed, judges. I suppose it is inevitable that accomplishing work of this significance will often come at considerable personal cost.

The role of the so-called "whistleblower" is increasingly recognized as important in the deterrence and detection of improper conduct affecting the public sector. There is ample evidence of the personal cost to whistleblowers, in the absence of adequate statutory protection. I am pleased to acknowledge Queensland's *Whistleblowers Protection Act 1994.* This Act, which has recently been reviewed, provides ample protection for whistleblowers under section 39 by removing liability for civil, criminal and administrative matters incurred by making a public interest disclosure (but not those attributable to a person's own conduct: see s 40); creates a defence of absolute privilege in defamation proceedings which may arise; and allows a person to disclose confidential information although they may be subject to an "Act, oath, rule of law or practice" without fear of disciplinary action. I note that the report on whistleblowing protection in the public sector, produced earlier this year by the Legal and Constitutional Affairs Committee of the House of Representatives endorses this protection afforded to whistleblowers under the Queensland Act and it will be interesting to see, in due course, what emerges as a result of the tabling of that paper in the Federal Parliament in February this year.

Now I present primarily today as a Judge. The courts' assessment of the significance of these issues may be drawn from observations made from time to time in relation to sentencing for official corruption. In the Supreme Court of Queensland in 1991, for example, it was said that "corruption of police officers, even on a small scale, is a very

serious matter. It is not an event like a false pretence between private persons, it strikes at the administration of justice at its source"; then in 2001, of a public servant who corruptly processed motor vehicle registrations and drivers licences, it was said that "there would need to exist extraordinary circumstances before a crime as serious as the present one could result in a sentence without some real time being required to be served as a consequence. Official corruption strikes at the health of society and unless strongly deterred has a ready capacity to spread. The honest administration of our system of government is a very important and fundamental matter that needs support from the courts."

Your focus is on the eradication of public corruption. Of course the public expects much more of its public officers than freedom from corruption: it expects decency, fairness, morality … Wherever the truth lies, we are reminded of this internationally these days by allegations levelled at Silvio Berlusconi, at the Governor of South Carolina of Argentinian note, and Sir Allan Stanford from Antigua. And while it would be inappropriate for me to discuss recent court proceedings in this State, it would be ostrich-like not to note them.

It is the case that corruption in the public sector has existed since time immemorial, but in Australia we are fortunate, in that we do not have the institutionalized corruption prevalent in many other nations. One need only look to some of our neighbours in the Asia Pacific region to see depressing examples of systems rife with corruption. I do note and applaud the fact that generally those countries are endeavouring to tackle internal corruption issues and it is of great value to us to provide a model of public sector integrity which our neighbouring countries may use as an example in developing their own internal systems. There are a number of factors underpinning Australia's low level of corruption including: adherence to the rule of law; a democratically elected government; a strong independent judiciary that is appointed, not elected and provided with security of tenure so not to be susceptible to the vagaries of public popularity; an independent press; and a commitment to Freedom of Information in public sector organisations.

It is encouraging to note that, on a global scale, Australia has one of the lowest levels of perceived corruption. According to Transparency International's 2008 *Corruption Perceptions Index*, which "measure[s] the overall extent of corruption… in the public and political sectors," Australia has the equal ninth lowest level of perceived corruption (up two places from 2007) out of a total of 180 countries, with the United Kingdom coming in 16th, the United States at 18th and China 72nd. This is perceived corruption not actual corruption, but nonetheless this is still a significant accomplishment and our public sector agencies should strive, not just to maintain that position, but to build upon and improve our global standing. If further encouragement is necessary to achieve this goal, perhaps I might inspire some Australian pride by mentioning that our neighbours across the Tasman rank equal first on the Corruption Perceptions Index.

My impression is that Australia is distinctive for pervasive integrity in public life. While one would hope that might be universal, human nature dictates there will be regrettable lapses, some of them spectacular. I am confident, however, that the dedicated application of the anti-corruption agencies is producing even better health in public life in this country. That you seek to develop and refine your capacities by programmes such as this, is most reassuring and greatly appreciated. I wish you well.