

OPENING SPEECH

ACCOUNTABILITY AND THE LAW - *SAFEGUARDING AGAINST CORRUPTION IN QUEENSLAND* CONFERENCE

Monday, 9 February 2015

Customs House, Brisbane @ 9.00 am.

I acknowledge the traditional owners of this land, the Jagera and Turrbal people and pay my respects to their elders past and present.

It is wonderful to be here. It was a close run thing. I am grateful the Queensland Election was called on 31 January. Shortly before Christmas, the Director of this conference, Ariane Wilkinson, kindly invited me to participate. Despite my appreciation of the importance of such a conference, I declined. I rightly apprehended that the topics raised could be contentious in the pending State election campaign. The conference was likely to be held during that campaign. I considered that, as a sitting judge, I should not participate. But once the election was called and it was clear the conference would follow the election, Ariane re-issued her invitation to me at Byron Bay, via email, and I was honoured to accept. I did not envisage that by the time I would be opening the conference, nine days after the election, the result would be still inconclusive, with the possibility of challenges in the Court of Disputed Returns and a chance of a critical by-election. For those reasons, I emphasise the comments I make this morning concern general, uncontroversial principles and are neither critical nor supportive of any political party.

There is no doubt that good governance, especially topics such as respect for democratic institutions, accountability and safeguarding against corruption were election issues.

Respected and authoritative commentators raised concerns about the policies of both sides of politics; and the media and the public listened. This was re-affirming for me as a Queenslander. It showed that Queenslanders value their democracy and will hold government to account if they apprehend legislative or executive action could infringe upon the proper governance of democratic institutions. Queenslanders plainly expect their government to provide them with personal security. They have the right to be safe from violence. They want economic prosperity. But they also want government to be accountable and they expect their democratic institutions to function free from corruption. They do not want Queensland to regress to the pre-Fitzgerald Inquiry era.

During the election campaign the Australia Institute drafted an open letter to Queensland political parties inviting them to commit to a fresh, principled way of conducting the business of government for the benefit of Queensland, its unique environment and all Queenslanders. Political parties were asked to commit to the following motherhood, but important principles of accountability and good governance put forward by The Honourable Tony Fitzgerald AC QC:

1. Govern for the peace, welfare and good governance 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 letter was signed by 52 prominent Australians, some of whom are here today. Unsurprisingly, I apprehend that during the election campaign, all political parties agreed with these principles. Yet as former Fitzgerald Inquiry Commissioner, Gary Crooke QC, noted in an opinion piece for the ABC's online publication The Drum:¹ it is one thing to agree to principles and another to live by them. You will hear more from Mr Crooke on this issue later today when he addresses you on Managing Political Influence – Lobbying and political donations.

For a person to be elected by the people to represent them in a parliamentary democracy is a great privilege and responsibility. If properly fulfilled, the role is demanding but, I am sure, immensely satisfying. The public and the media should honour and respect such members of parliament, not attack and belittle them. But human frailty means power can corrupt, so that an effective democracy must have strong checks to ensure accountability and to safeguard against corruption. This is particularly so in Queensland where we have no elected upper house, no Bill of Rights, only one principal daily newspaper and, commentators agree, a diminished anti-corruption body. As to this last issue, I note that the Honourable David Ipp will speak shortly about the Independent Commission Against Corruption (ICAC) experience in New South Wales concerning the infamous issuing of coal exploration licenses. His insights as ICAC Commissioner will be especially enlightening, not just for Queenslanders. The anti-corruption body of our near and important neighbour, Papua New Guinea, has been critical of PNG's Prime Minister. For its trouble it is reportedly so starved of funds by the executive that it is virtually defunct. And the concept of an Australian federal anti-corruption body is also supported by many.

¹ <http://www.abc.net.au/news/2015-01-23/crooke-qld-bipartisan-support-for-ethical-bankruptcy/6042508>

I congratulate all who have organised, sponsored, supported and are participating in this conference. I am confident it will stimulate debate amongst those best-placed to develop an excellent framework and practices for governments to prevent public corruption, whether here in Queensland, federally or beyond. I hope that all Australian legislators will carefully consider the ideas arising here today, including those concerning the best model for an effective anti-corruption body. I urge our legislators to remember the words and emulate the actions of the inaugural President of the Republic of South Africa, Nelson Rolihlahla Mandela, who said on this topic:

“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order...

It was, to me, never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my Government and my Office and judged against.”²

With those words I declare this important conference officially open.

² President Nelson Mandela’s speech at the International Ombudsman Conference, Durban 2001 quoted as the preface in “Justice: A Personal Account”, Cameron E, Tafelberg, 2014.

And speaking of famous South Africans, our keynote speaker was born in Johannesburg and graduated with a Bachelor of Commerce and Bachelor of Laws from the University of Stellenbosch. He became a partner in a Johannesburg law firm in 1964 and was admitted to the South African Bar in 1973. South Africa's loss was Australia's gain when David Ipp moved to Australia in 1981 and commenced work as a barrister in Western Australia. He was appointed Queens Counsel four years later in 1985. He served as Treasurer of the Law Society of Western Australia.

He has had high academic achievement as a Fellow of the University of Western Australia, and at the Inns of Court in London, and as a Visiting Fellow at the University of Cambridge. He has authored many learned publications and journals and has contributed to various books. In 1994 he was a Fulbright senior scholar and scholar-in-residence at the University of Virginia School.

Justice Ipp served as a judge of the Supreme Court of Western Australia from 1989 to 2002, for much of that period as judge in charge of the civil list. I first met him shortly after my appointment as President when he visited Queensland and other jurisdictions in reporting on the desirability of establishing a Court of Appeal in Western Australia. Continuing ever eastwards, Justice Ipp was a New South Wales Court of Appeal judge from 2002 to 2009.

In 2002 he chaired the Panel of Eminent Persons looking into the reform of tort laws. The final report was known as the Ipp Report. Many of its recommendations were included in

subsequent personal injury legislation throughout Australia. I understand, however, that Justice Ipp was not entirely happy with all aspects of that legislation.³

In November 2009, Justice Ipp was appointed Commissioner of the ICAC and oversaw the sensational enquiries into former New South Wales Ministers Eddie Obeid and Ian McDonald. It is that period of his illustrious legal and judicial career about which he will speak today. He retired from that role in January 2014.

I have read Mr Ipp's excellent paper. He has two fascinating tales to tell - Operation Jasper and Operation Acacia – of good triumphing over evil. He concludes by sharing his ideas for beating public corruption. We are privileged to share this morning with this learned and distinguished South African-Australian jurist, reformer and holder of high public office with integrity. Please join me in welcoming The Honourable David Ipp AO QC.

³ "Tort Changes Went Too Far: Judge", Chris Merritt, *The Australian* 5 April 2007.