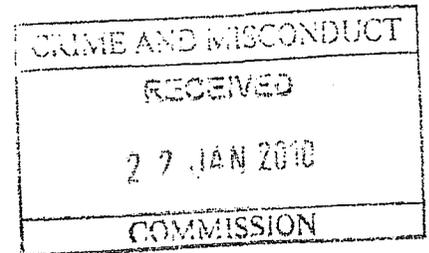


CP 200
Scott Flavell
[REDACTED]
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13 January 2010

The Chairman
Crime and Misconduct Commission
GPO Box 3123
Brisbane QLD 4001



RESPONSE TO INVITATION FOR SUBMISSIONS – CMC REVIEW OF MINISTERIAL OFFICE PUBLIC SERVICE INTERACTION

This submission has been prepared in response to your request for comments from the public concerning issues canvassed before the public hearing into allegations against the former Ministerial Adviser, Simon Tutt.

In making this submission I hope to assist with the deliberative process to inform public debate on these matters and consider I am well qualified to do so:

- I was employed as a senior public servant in Queensland for over a decade
- From 2002-06, I was a Director General with responsibility for several portfolios, including at one stage, Sport and Recreation Queensland – providing me with a thorough understanding of the sports grants process
- I have served as a Senior Ministerial Policy Adviser, (Chief of Staff) to two Queensland Government Ministers, Mr Mackenroth and Dr Hamill, on three separate occasions
- I know and have worked with a number of the individuals who have appeared before the hearing and
- I have been the subject of a CMC public hearing.

The structure of this submission is firstly to focus on some of the key public administration challenges as a result of issues raised before the hearing and to provide some context as to why these matters have arisen.

The subsequent part of the submission briefly analyses some of the evidence before the CMC, in particular, areas where I consider inconsistencies may exist.

1. The role of Directors General and Senior Public Servants in advising Ministers

Much of the hearing has focussed on the role of public servants in providing frank and fearless advice to Ministers. In focussing on this issue, the Hearing has relied upon the 1987 Fitzgerald Commission of Inquiry concerning the role of public servants, Ministers and the separation of powers.

The Fitzgerald Report describes the role of public servants to provide objective frank and fearless advice to Ministers free of bias or influence. The quote used in the Report reflects acknowledged Westminster public policy theory and practice.

During the course of the hearing, most witnesses have agreed with the views expressed in the Fitzgerald Commission report as the objective for the relationship between Ministers and public servants. In reality, the situation tends to be somewhat more complicated and it is worth reflecting upon some of the causes of this complexity.

Context of Fitzgerald's comments

The Fitzgerald report was released in 1987. In the subsequent 22 years, the Queensland public service and policy processes have changed considerably.

In 1987, all public servants including Directors General were tenured employees which provided a significant level of job security. As a result of this job security, the salary levels, at least for the senior public servants, were generally lower compared to private sector counterparts.

Such employment arrangements are more conducive to the Fitzgerald notion of frank and fearless advice – obviously a public servant could not be dismissed or victimised because a Minister did not appreciate the advice he/she was receiving. The system of tenure tended to encourage career public servants and a strong concept of public service.

Since that time there has been a number of changes to employment conditions of senior public servants which has eroded the tenure and job security component of their employment. In the early 1990s, a Senior Executive Service (SES) was established, this was followed by the removal of tenure from public service positions and the placement of all new SES officers, including those promoted to new positions, on 5 year contracts.

The five year contractual arrangement was more reflective of practices in the commercial sector and indeed, the move at the time to commercialise and corporatise government functions. The five year contract still had reasonable provisions in the event the contract was not renewed and/or it was terminated. The senior public servant could receive a payment under the contract and all prior public service experience could be recognised in the redundancy payment calculation.

From the early 2000s, the then Public Service Commissioner moved to reduce the redundancy benefits and employment contract terms for senior public servants. Five year contracts became three year contracts with an option to extend for a further two years. The new contracts did not recognise an officer's previous public service work history for the calculation of redundancy. Typically, the redundancy arrangement would be two weeks pay for every year of service. An officer may have 20 years, or 40 weeks of pay as security in the event of redundancy, but would be required to relinquish this service and entitlement upon accepting a new SES contract.

The role of a Director General

The role and functions of a Director General have also changed over this time period. The job has become far more complex, at least in the large agencies, and the accountability and reporting mechanisms are challenging. The same changes also apply to the role of the Minister.

In most Governments Ministers like to develop a close working relationship with their Director General. As Ministers and Governments are judged by outcomes then it

follows that there is limited capacity to accept poor working relationships and personal tensions.

Directors General who have a poor working relationship with a Minister can on occasions suffer an unfortunate fate. [REDACTED]

The implications of these changes

Most Directors General and Senior Executives develop good working relationships with Ministers and their staff. Generally, an experienced public servant will know how to work with a Minister and have the experience and professional integrity to say no to a Minister and/or staff.

There are occasions when public servants can feel obliged to adhere to a Ministers request, even if it is inappropriate. While this should not be a consideration, undoubtedly some public servants may have the view that their position could be at threat if they do not comply with the Ministers request. The employment status of current senior executives obviously contributes to this element of risk.

It is not difficult to terminate the employment or not renew a public servants employment contract. As detailed above, contracts are now effectively three years with limited compensation on termination or non-renewal. Added to this reduced level of employment security has been the introduction of pre and post employment separation guidelines which restrict employment opportunities for public servants for a certain period after they depart the public service.

Reduced employment security and redundancy benefits combined with future employment restrictions provides the potential at least, to restrict the frank and fearless advice, as envisaged in the Fitzgerald report.

A possible solution

It would be difficult to revert to the former arrangements of tenure for all public service employees. Moreover, employment contracts can serve an important purpose to provide incentives, performance criteria and discipline for senior executives. Most Australian jurisdictions operate on a contract system. Few have three year contracts and Queensland is the only jurisdiction with pre and post separation employment conditions.

One possible solution would be to revert to 5 year employment contracts for senior public servants, similar to the Australian Government arrangements. More favourable redundancy provisions should be reintroduced and/or considered. Review of best practice employment arrangements for senior public servants in Westminster style Governments should be undertaken to draw on the best model to provide the right balance between performance management, remuneration, job security and ethical conduct.

The review could be undertaken by the Auditor General, reporting to Parliament rather than the Premier, to ensure a bi-partisan approach.