

OPINION

Criminal justice issues appear set to remain centre stage in Australian political debate, especially at the State level. State election campaigns are now characterised by 'law and order auctions' with the major political parties seeking to outbid each other in relation to supporting the police and being 'tough' on crime. Politicians appreciate that criminal justice is a part of the legal system which provokes strong opinions from members of the general community.

Five of the articles in this issue of the *Alt.LJ* highlight problems (past, current and future) with the way in which our criminal justice system operates. Sally Kift outlines the haphazard nature of reform of Queensland's *Criminal Code*. David Brown's contributions illustrate the need for ongoing review of the performance of the police and legal appeal processes, both key aspects of the criminal justice system. Darren Palmer highlights problems which may follow from any uncritical adoption of policies which are seen to have been successful in other countries. Lynette Byrnes reminds us of the difficulties caused for the intellectually disabled by contact with the criminal justice system. The remaining articles relate to legal aid and social justice issues. Merran Lawler exposes the myth regarding Queensland's mobile home residents having security of tenure while Francis Regan and Mary Anne Noone both suggest that our legal aid system, far from being a Rolls Royce, remains the Holden Kingswood it was in the early 1970s.

Queenslanders will go to the polls before the middle of 1998 and the Borbidge Government is clearly gearing up to make law and order a key election issue. The government has 'updated' Queensland's *Criminal Code* with a strong emphasis on responding to media reporting about the application of the criminal law in particular cases. The Government has also 'toughened' existing sentencing legislation such that certain 'serious violent offenders' are no longer eligible for remissions on their sentence. At least two further major criminal justice reforms remain to be dealt with before the election: creation of a new Crime Commission and increasing the investigative powers of police.

New Crime Commission

The Borbidge Government's proposal to establish a separate Crime Commission to investigate matters including organised crime and paedophilia provides the Government with the chance both to be seen to be taking firm action against these problems and to settle some scores with the Criminal Justice Commission (CJC). The CJC and the Government have been at loggerheads since the Government's establishment earlier this year of the Connolly-Ryan Inquiry into the CJC's operations.

When Justice Thomas of the Queensland Supreme Court closed down the Connolly-Ryan Inquiry in early August due to concerns regarding bias, it appeared the CJC had, against the odds, won its war of attrition with the Government. However, a report by Children's Commissioner, Norm Alford, raising concerns about paedophilia in Queensland has subsequently given the Government the rationale it needed to establish the new Crime Commission and remove powers from the CJC. Commentators have criticised the CJC's work in investigating organised crime and paedophilia and it is these areas which would become the responsibility of the new Commission. Premier Borbidge's talk of not being distracted from implementing his Government's proposals 'for the benefit of Queensland' carries with it a dismissal of any criticism as 'anti-Queensland'.

Amidst the claims and counter-claims of the Government and the CJC, it appears the real issue, namely the importance of independence, is (conveniently for the Government) being forgotten. The CJC was established after the Fitzgerald Inquiry identified the need for an independent body to investigate allegations of criminal behaviour by members of Government and public servants including the police. Concerns about political interference demand that an independent body have responsibility for such investigations. The proposed Crime Commission is to be managed by part-time commissioners including the Police Minister and the Chair of the Parliamentary Criminal Justice Committee which will provide fertile ground for criticism that powers are being misused against political opponents.

Police powers

In June, the Government released a lengthy discussion paper as part of a review of police investigative powers. Submissions were sought from the public by early August. Nothing further was heard in relation to the proposals contained in the Discussion Paper and the submissions until Cabinet approved 'sweeping new police powers' in early October. Senior police were described as being 'very satisfied' with the new powers endorsed by Cabinet. As yet, no draft of the *Police Powers and Responsibilities Bill* has been released for public scrutiny although it is expected the Bill will be introduced to parliament later this month with a view to coming into operation in April 1998.

Police will be able to seek permission from a Supreme Court judge to use various tracking, listening and surveillance devices when investigating serious offences. In a positive move, an independent monitor will be appointed to oversee the exercise by police of these new powers. Police will be given power to question suspects for up to four hours before charging them, to demand the name and address of witnesses to serious offences, as well as the ability to 'move people on' from certain areas. It is likely that many of the new powers will rely on 'reasonable grounds' type tests to authorise various police actions. The heavy reliance on 'open-ended' powers of this kind increases the importance of external review mechanisms. Many of these important discretions are likely to be exercised without the courts playing a key role in regulating the use of such powers. The appointment of an independent monitor will not of itself provide the strong regulatory framework necessary to ensure such powers are only exercised in appropriate circumstances.

It is disconcerting that, less than ten years after the Fitzgerald Inquiry, the investigative powers available to police are to be significantly enhanced without there having been a comprehensive public debate on the issues. While a Discussion Paper was released and a series of poorly attended public meetings convened, there has been no clear response on the part of the Government to concerns expressed about expanding police powers. The Discussion Paper lacked any comprehensive discussion of the fundamental principles against which its proposals should be assessed. It was not made clear what level or type of justification should be required before existing police powers are extended.

What other law and order 'initiatives' await Queenslanders in the run-up to the election is hard to know. There is likely to be a range of them.

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