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ROYAL COMMISSIONS: A PRELUDE TO THE REFORM PROCESS

Over the last 15 years two Australian states seem to have broken new ground in the exposure of systemic corruption within their police forces.

There were many precipitants to the establishment of two judicial inquiries which effectively cracked the code of silence to reveal that our police have been organising the crime with their criminal associates - not fighting it.

In the two inquiries which are widely considered to be the most successful - Fitzgerald's in Queensland and Wood's in New South Wales - luck seems to have been a major factor: 'Luck' in the fact that the inquiries were set up in the first place. The reputed success of the inquiries then came through their tactics and methodology -- the use of coercive powers to conduct covert surveillance including the clever use of listening and video recording devices, the application of pressure to secure the co-operation of what we call 'roll-over' witnesses in return for indemnity from prosecution.

There's an old joke in Australia that politicians never call inquiries into anything unless they know the result beforehand. But the Fitzgerald and Wood inquiries were set up through very unusual circumstances which did not fit the cynically accepted pattern.

What I want to examine today is the prelude to both the Fitzgerald and Wood royal commissions to look at the political and media climate which prevailed at the time. So maybe we won't have to rely on mere luck in future. I covered both the Fitzgerald and Wood inquiries for ABC television current affairs. As a journalist I am aware of the media's failings which are undoubtedly many. But I am pleased to note that the Australian media has substantially redeemed itself in terms of its social responsibility within our democracy in the part it has played in bringing to public notice the symptoms of endemic police corruption over many years.

Evan Whitton, the great pattern journalist of Australia, has coined the term 'the Cameron effect', a theory on the formation of public opinion. James Cameron was a journalist on the London News Chronicle. Who knows what forms public opinion? Cameron observed that many people read the sports pages and almost nothing else. The Cameron effect holds that public opinion can be formed in a way similar to a physics experiment in a laboratory where a space is bombarded with particles (in the media's case, facts) until a critical mass is reached. At this point the bombardment of just one more particle, one more fact, is all that it takes to cause an explosion. (A recent example of the Cameron effect in Australia perhaps was the ABC TV program Media Watch's revelation of a cash for comment arrangement involving an influential radio talkback host and the lobby group representing Australia's banks. The revelation came after years of stories about the apparent compromise of commercial radio. Just one more particle, one more fact, and there was an

explosion precipitating the first Australian Broadcasting Authority Inquiry into possible breaches of the Broadcasting Services Act and codes of conduct).

The Cameron effect was apparent in the circumstances surrounding both the Fitzgerald and Wood royal commissions. In the case of Fitzgerald it was the ABC program Four Corners, with The Moonlight State; in the case of Wood it was independent MP John Hatton's speech to Parliament pulling together the experiences of honest police who had found themselves victims of bureaucratic reprisal after having internally raised their concerns about corruption.

In both Queensland and New South Wales there had been strident political denial of the existence of widespread police corruption for years.

In both states the politicians, of all parties, have largely held the media in contempt. There has been much to be contemptuous about, I'm sure. Media can be ignorant, sensationalist, inaccurate, cowardly, easily diverted and manipulated or intimidated by this country's defamation and contempt laws.

Such a contemptuous attitude, which is still apparent today, probably contributed to the explosion on the police corruption issue produced by the Cameron effect.

In Queensland's case the denials of the politicians were backed by the lawyers asked from time to time to make some cursory and comforting inquiry.

In Queensland politicians and police adversely identified in some media reports resorted to defamation proceedings to intimidate the media, although they said it was to protect themselves from media smear and unsubstantiated attack.

Until 1987 the newspapers of Queensland, led by the Brisbane morning daily, The Courier-Mail, had demonstrably failed for decades to pressure the politicians to uncover what was really happening in that State. You might think the media is a powerful force and it can be when we stumble upon or uncover by our own hard work some unpalatable facts. But the media does not have coercive powers. We cannot search premises or demand the production of documents. We'd go to jail for trespass and invasion of privacy. We operate by a system of informants, some public spirited, and some, regrettably, malevolent. That is why we like leaked documents, unalloyed by somebody's spin, best of all.

In Queensland before Fitzgerald the journalism practised was of the old school variety. Those journalists who could successfully gain the confidence and the 'scoops' of the powerful, including the police, were seen to be masters of their profession.

(Media failings were not unique to Queensland. What did The Sydney Morning Herald ever do at the time to expose the apparent high level of corruption and SP bookmaker bribery during the Askin years of New South Wales politics in the 60s and early 70s?).

Over a period of 15 years the ABC's Four Corners program crossed the border into Queensland to report on the State's unique way of doing things. The effort was met with parochial rejection of a belittling southern view of the State.
Nothing happened.

Queensland's patronage system was the subject of one program by reporter Peter Ross. In it the activities of prominent political figures were investigated and a system of favoured treatment for friends of the government was revealed. Nothing happened.
Legal action was threatened. The Four Corners report was ignored by the local newspapers except for some reports quoting government and party figures

attacking the program and calling on the federal government to investigate the ABC for political bias. On another program Queensland's four zonal gerrymander or malamander and much-criticised parliamentary system were investigated. Nothing happened.

In 1982 then Brisbane-based ABC Nationwide reporter Alan Hall compiled a series of reports which included the testimonies of two junior police officers alleging corruption at a high level in the Queensland police force. Nothing happened. But writs for defamation were issued against the ABC by the Police Commissioner, Sir Terence Lewis, and other senior police. Nationwide's stories attracted some local newspaper coverage which was more in the nature of attacks on Nationwide by the Police Department and then Police Minister Russ Hinze.

But Nationwide's local impact was such that the Queensland government set up a Police Complaints Tribunal to ease public and Opposition pressure. In 1985 that same Police Complaints Tribunal, then under the chairmanship of Judge Eric Pratt, was exposed by Kerry O'Brien in another Four Corners investigation as a systematic white-washer of complaints against police. Nothing happened.

But by then that probably was nothing unusual for the ABC and Four Corners. Reporters, producers and crews probably contented themselves with the knowledge that at least they had tried to raise the consciousness of the people of Queensland about what was really happening in their State.

In 1986, as associate producer for Nationwide, Queensland, I produced a forty-five minute documentary, The Sunshine System, bringing together many of the themes from the Four Corners reports with some fresh evidence of political interference in the Queensland judiciary. The documentary, broadcast in March 1986, nailed up the entrenched problems of the State: the minority ruled the majority; the Parliament did not work; the police were the long arm of the State; the judiciary was subject to political interference; the opposition was divided and ruled and the Press was a lenient critic. In short, there was no such thing as the separation of powers in Queensland. Nothing happened.

Chris Masters' Moonlight State program broadcast in 1987 had an impact through a combination of good luck, shocking visuals and good journalism. When Masters and his production team Shaun Hoyt and Debbie Whitmont went to Queensland in 1986 to pursue Masters' information about organised crime in North Queensland they found plenty of material. They flew to Brisbane and discovered a highly organised massage parlor and illegal casino operation. People would talk to them off-the-record. But only with persuasion and assurances could they record on-camera interviews with some witnesses. In the past, witnesses who had appeared on camera in Queensland (particularly the two officers in Hall's Nationwide report five years earlier) had been smeared under parliamentary privilege by the politicians, their police careers ruined because they had dared to go to the grubby media.

Masters had to leave much of the material he gathered on the cutting room floor. Nothing could be allowed to be broadcast which could put the program's findings at risk. As usual with reports of this type, some witnesses had to be interviewed in silhouette. It is a journalistic technique which is often used to protect witnesses but is considered by reporters to be far less preferable to full

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identification of the brave witness.

The Moonlight State contained all the journalistic techniques: interview grabs from identified and protected witnesses, leaked documents, reconstructions of corruption pay-offs and conversations using actors. But in 1987 in Queensland - a State gripped by the news that its long serving and popular Premier, Sir Joh Bjelke-Petersen, was campaigning to become Prime Minister of Australia - the pictures which Masters used had more impact than any of the old tried and true techniques of TV investigative journalism.

For years Queenslanders and their metropolitan media had laughed along with the politicians who said prostitution was 'contained and controlled' and that illegal casinos did not exist. They were harmless ethnic social clubs. The government had assumed the high moral ground through its law and order and fundamentalist rhetoric. Anyone who attacked the police force, even dissident police officers themselves, was labelled a ratbag or a left-wing stirrer. Investigative programs like Four Corners were condemned as pursuing a Marxist or left wing agenda. But on May 11 1987 when the Moonlight State hit the airwaves in Queensland the pictures shocked the Government's Bible-belt heartland. Pictures of writhing, oiled bodies on the Gold Coast's strip clubs were flashed. The scene was one of Sodom and Gomorrah, right there in Queensland. Excited, drunken young men, their tongues licking from side to side in a sexual frenzy at a naked woman, were shown over Masters' sober voice-over narrative that all was not what it seemed in Queensland.

Brisbane's Courier Mail had published a series of reports by investigative journalist Phil Dickie detailing the extent of parlors, illegal casinos and their owners in Queensland. The government had taken no action on The Courier-Mail reports, which were commissioned because it was known that Four Corners was in town. Everyone was waiting to see what Four Corners had. On 12 May, the day after the Moonlight State was broadcast, Acting Premier and Police Minister Bill Gunn criticised the Four Corners report saying, in effect, it did not seem to him to have much substance; it used actors and people whose faces you could not see. But he said he was not going to have a cloud hanging over his head as experienced by his predecessors. He would set up an inquiry probably to be headed by Judge Eric Pratt, chairman of the Police Complaints Tribunal. Gunn dropped the Pratt appointment idea following public criticism by the then president of the Bar Association, Trevor Hartigan QC, the Liberal Party and the Opposition. Only then did the name of a little known silk, Tony Fitzgerald QC, enter speculation. The terms of reference, accepted by Fitzgerald, were written from the transcript of the Four Corners program and listed the alleged organisers of Queensland crime named and identified by Masters and his researchers.

Another name, not listed in the terms of reference, but reported and clearly identified by the Four Corners program, was that of former policeman, Jack Reginald Herbert. Herbert's naming by Masters appeared a little out of context in the program and no specific allegation was raised about him. But the document Masters and his team produced to substantiate the naming of Herbert may go down in the history of Australian journalism. For many of Queensland's honest police watching the program, the penny dropped. Jack was back on the take. The program established a link between organised crime and the Queensland police force. The document was a contract of sale on a Bowen Hills house. The sellers were alleged crime figures Geraldo Bellino and Vic Conte. The buyer? Jack Reginald Herbert, a known personal friend of the

Commissioner of Police, Sir Lawrence Lewis. There on the one "exquisite" document were the names of both parties - organised crime and the police. The rest, as they say, is history.

Herbert was tracked down to his bolthole in London, rolled over in return for an indemnity, and implicated Lewis and other senior police in the 'joke' - a bribes network from organised crime which he had built up with the Commissioner of Police over a decade. Lewis was stripped of his knighthood and went to jail with a 14 year sentence.

The Fitzgerald Commission, which ran its ground-breaking inquiry based on openness, overturned the police culture's known manipulation of six previous public inquiries and criminal trials (all but one conducted by the legal culture): the National Hotel Royal Commission of the 1960s, the Scotland Yard inquiry established by a former anti-corruption commissioner Ray Whitrod, the so called Southport SP betting case in which widespread police corruption was alleged and dismissed, the trial of Jack Reginald Herbert in 1974 in which he and other police officers were acquitted; the Lucas criminal law inquiry; the Williams Royal Commission into drug trafficking (involving Queensland police administration in the late 1970s).

The extensive diaries of Police Commissioner Lewis revealed during the Fitzgerald inquiry also raised the question of influences on the appointment of judges and was evidence that a Police State existed in Queensland.

The Fitzgerald inquiry for the first time opened the eyes of Australians about the potential for official and private corruption and the deficiencies of then existing internal and external police accountability regimes. From then on properly resourced, independent and committed external oversight of the operations of police has been on the agenda in Queensland and Australia.

In New South Wales, the prelude to reform bore remarkable similarities to Queensland. There was strident denial by the politicians who accepted without apparent question the reassurances of the police force.

The police corruption debate quickly degenerated into Australia's sometimes pathetic two-party brawling where the public interest is quickly ditched for political advantage.

The Askin Government and later the Wran Government denied corruption was widespread. The Moffitt Royal Commission (1973-74) into the role of organised crime in licensed clubs and possible links with the American mafia effectively cleared the government (in the absence of clear evidence) while establishing that organised crime did have a presence in the club industry.

The murder of Donald Mackay, the anti-drugs campaigner and Liberal Party candidate in the Griffith area on 15 July 1977 produced substantial publicity and later concern about the adequacy of police investigations. This led to the Woodward Commission of inquiry which found that Mackay had been killed by a mafia organisation responsible for marihuana growing at Griffith and with corrupt links to New South Wales police. Woodward's recommendations for reform were effectively ignored.

After the conviction of Mackay's murderer, investigative journalist Bob Bottom revealed further inadequacies in the police investigation leading to the Nagle inquiry. While Nagle was highly critical of the investigation, nothing systemic was pinned down.

But the issue of police corruption in New South Wales now had political weight. In his excellent book, *Scandals: Media, Politics and Corruption in Contemporary Australia*, author Rodney Tiffen says Labor Premier Neville Wran announced the Nagle inquiry on the day he called the 1984 election and also promised to create a new office of Judicial Commissioner of Complaints. It was an office in which critics, according to the Premier, could stop their yapping and put up or shut up. Public confidence in the office was not apparent and by 1986 the office of the Commissioner of Complaints had faded into oblivion.

Allegations on another Four Corners program (Chris Masters again) called *The Big League* in 1983 alleged Premier Wran may have interfered with the administration of justice when some magistrates complained to the program that the Chief Magistrate Murray Farquhar told them the Premier had called about a case involving the secretary of the New South Wales Rugby League, Kevin Humphreys. Wran was cleared. But in spite of overwhelming evidence that Farquhar had invoked Wran's name the Premier attacked the ABC bitterly for 'this blot on the history of so called investigative reporting'. The Age tapes (February 1984) were transcripts from telephone taps illegally obtained by New South Wales police seeking intelligence about organised crime figures. The tapes implicated High Court judge Lionel Murphy and after Murphy was named and the allegations investigated by parliamentary committees he was charged, brought to trial and eventually acquitted.

The controversy and publicity from the Wran royal commission and the Murphy trials added to public disquiet about policing, politics and judicial compromise in New South Wales.

It was an issue picked up by the Liberal Party under Nick Greiner who went to the 1988 State election with a policy to establish an Independent Commission Against Corruption on the advice of Gary Sturgess, his policy analyst, and based on the Hong Kong ICAC model. Greiner won office. For five years the ICAC operated in New South Wales and made some headway in exposing official corruption in slush funding of political parties and the trade in confidential government information. It also led to Greiner's own political demise in 1993 over what became known as the Metherell affair - a jobs for the boys issue.

But significantly the ICAC made no real headway on police corruption.

As Rodney Tiffen has noted: 'In the 1990s there was probably less monolithic, institutionalised corruption than there had been a decade earlier. Under Police Commissioner John Avery a determined assault had driven many corrupt officers out of the force and to a large extent destroyed the old cosy networks. However there were still many stories of police misdeeds and an apparent readiness by officers to turn a blind eye to them'.

In 1993 Four Corners reporter Chris Masters again launched himself into the issue with a program called 'The Greenlight State' which highlighted how, after the reforming efforts of Commissioner Avery, the formation of the ICAC and the apparent destruction of the corrupt power of the old CIB, corruption and its toleration were still widespread.

The program was dismissed by politicians and critics as containing nothing devastatingly new. Tiffen maintained that by that time the public of New South Wales was suffering scandal fatigue.

But two years later Independent MP John Hatton, holding the balance of power in the New South Wales lower house with other independents, successfully moved for the establishment of a Royal Commission into police corruption. Premier John Fahey gave the commission to Justice James Wood. Over 452 sitting days the Wood Royal Commission heard from 640 witnesses, attracted 140 submissions and generated 4000 exhibits with nearly 47,000 pages of transcript totalling twenty million words. As a result of its hearings 92 police were dismissed retired or

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resigned, 44 police officers received amnesty, 24 were granted immunity and five granted immunity. In January 1996 Tony Lauer, the Commissioner of Police who had replaced Avery and who famously asserted on 1 August 1995 that there was no institutionalised corruption in New South Wales resigned as police commissioner and in August 1996 Peter Ryan was sworn in. The ICAC lost investigative jurisdiction over police, not role being taken by a new Police Integrity Commission with full royal commission powers. The Wood royal commission, through covert surveillance and roll overs, using non-New South Wales police to help ensure the secrecy of its operations, finally confirmed the endemic nature of police corruption here particularly its subversion by the heroin and other illicit drug trade and started the contemporary reform process.

From the time of the Wood Royal Commission's final report in 1997 to now it has become clear to most Australians that effective accountability can be enhanced through external oversight on an ongoing basis. But, of course, it depends on the skill, resourcing and commitment of any external body.

The tortuous road to reform in our country has been reached through the courage and commitment of many fine Australians within the police forces, the royal commissioners themselves, those of the legal profession who genuinely came to assist, within the political community who set aside their immediate party political interests, within the citizenry who willingly came forward to assist the Fitzgerald and Wood inquiries and, I'm pleased to say, within journalism.

Given the power of the illicit drug trade to subvert the law enforcement effort we cannot rest on what has been achieved to date.

Even external oversight bodies can be subverted or fall into complacency and laziness as the daily media and the political debate switches to other more diverting issues and topics.

But the need for the community, not just the media, to diligently watch what is really going on, is now established as a necessity for a properly functioning democracy.

And equipped with our contemporary and bitter experience, the public is more able to pick up on the lies and dissembling of politicians, the diversions and manipulations of authorities more interested in covering their backsides than uncovering the truth. Beware the politician or policeman resorting to the defamatory writ. Be sceptical and alert to the non-denial denial. Be conscious of the Cameron effect, where every particle, every fact, can play its part in a public opinion explosion ultimately exposing the truth.

We now have protected disclosure and whistleblower legislation in New South Wales. Incredibly, whistleblower protection still does not exist federally or in many other states and territories. . . . Protection of informants is a start on the reform road to change a culture of corruption and corrupt attitudes. But after what has happened to many Australians who had the courage to speak up and withstand the sometimes devastating personal consequences, we cannot expect too much in this area.

Can I ask for discussion and support for one other reform - to strengthen the role of investigative journalism? Journalists in Australia need legislated protection for their confidential sources. This would be another very effective measure available to citizens wishing to alert the public about criminality and corrupt practices without having to unnecessarily risk their lives or livelihoods in the process. At the moment Australian journalists are jailed by the courts for contempt when they abide by the now internationally accepted ethical rule that under no circumstances are their confidential sources to be divulged. Other countries provide this protection. Why not in

