

Destroying evidence 1990 – The Rule of Law

People's protector or flower show opener?

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PROFESSOR Field said the concern surrounding successive governments' justifications for avoiding investigating the actions of former Labor Ministers – that the cabinet-authorised shredding was carried out following legal advice – was that the government was given advice “which suited it”.

“They're going to constantly hide behind the advice they got from Crown Law, from the DPP, from the CJC at one point, and our concern of course, is that that legal advice was engineered,” he said.

“They were told more or less what advice they wanted.”

He said following the sentencing of a Baptist minister last year for destroying evidence, it had been demonstrated that the Goss government had acted illegally.

“I think to that extent she [the Governor] could probably be driven into insisting that there is a prosecution,” he said.

“If you can't rely on the Governor, who is going to sit above government?”

“Our hope is that with a Governor, who nominally represents Her Majesty, we have an authority which sits outside the political influence of the government of the day, and can sort of rattle the woodwork and bang the table when the naughty boys misbehave, if you like,” Prof Field said.

Leading constitutional authorities – Professors George Williams, Gregory Craven and Gerard Carney – expressed doubts about the extent of the Governor's powers and her willingness to act without the advice of her Ministers.

These doubts arise from the powers of the Governor outlined in the Queensland Constitution.

Clause 34 does vest the power to appoint and dismiss Ministers in the Governor alone, and provides that he or she is not subject to

direction by any person and is not limited as to sources of advice in exercising the power of appointment or dismissal.

And the oath Queensland's Governor is required to take before assuming the office requires that he or she will “in all things associated with the office, duly and impartially administer justice in Queensland”.

However, the convention of responsible government – which requires ultimate authority to be exercised in accordance with the will of the people – limits the Governor's powers to act with the advice of his or her Ministers.

Professor Craven, director of the John Curtin Institute for Public Policy, said the principle of responsible government meant the Governor had very little real power to force the Beattie government to provide her with the brief she had requested.

He said there seemed to be a misguided assumption that a Governor would automatically use his or her reserve powers to force a recalcitrant government to cooperate.

He said that a Governor would be more likely to resign from his or her post in protest, rather than try to force cooperation from the government by threatening to dismiss it.

“If the Governor were to form the view that the government was treating her with contempt ... I suspect that – I'm talking about a Governor in principle – [he or she] would call the Premier in and say ‘You are treating

my office with contempt, I've told you to give me this information and you won't. I'm resigning.”

“If the Governor of Queensland publicly resigned because she said that the government had treated her office with contempt and had refused to provide information that was properly within her constitutional office, I don't think that'd look that good,” he said.

“Not even in Queensland.”

Professor Craven said even if the Governor were concerned about the government's activities, any discussions between the Premier and herself would be kept entirely confidential to avoid embroiling her position in political controversy.

“You know, it's like the mating dance of the marsupial mole,” he said.

“We know they breed, because there are marsupial moles, but we have no idea what they do.”

Gilbert and Tobin Centre of Public Law director Professor Williams viewed the powers of the Governor, both in her

ability to force the government to comply with her request and to exercise reserve powers, in a similar light.

“They are involved in ceremonial functions, opening flower shows and things like that, but they are not positions of real power,” he said.

Professor Williams said parliament was more the mechanism which helped to hold

governments to account.

However, Queensland is the only state in Australia with just one house of parliament – in which the Beattie government enjoys a clear majority.

“I can understand in Queensland why there may be a particular focus on the Governor but the difficulty is the Governor is this very old post with little or no real power,” he said.

Professor Williams also disagreed with the assertion that the Governor had a special constitutional duty to maintain the Rule of Law in Queensland.

“... I'm not sure she has any particular duty to do so more than anyone else in a public office, she's not a judicial figure,” he said.

“Her real duty is to be the Queen's representative in Queensland, and in doing that, her duty is in almost every case to act on the advice of the government of the day.”

Professor Carney, director of research at Bond University's Faculty of Law, said the Governor did have the power to demand information by virtue of her constitutionally vested right to dismiss the government for illegality.

“If the Government doesn't comply [it] runs the risk of having the reserve power exercised against them,” Professor Carney said.

However, like Professors Craven and Williams, he said only in the worst-case scenario – where the government was persisting in gross illegality – would the Governor's reserve powers be triggered.

Professor Carney said while it was indeed concerning that the government had relied on an interpretation to excuse the shredding in the first place he wouldn't call it a constitutional crisis.

Saturday's The Courier-Mail published a story that Her Excellency may be planning to resign from her position as Governor to take up a post at the office of the United Nations High Commission for Human Rights in Geneva.



Her Excellency, The Governor



Tony Morris QC

Commissioner warns shredders

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MR MORRIS said he intended to conduct his Royal Commission as publicly as possible, since the people of Queensland were funding it.

He said he expected to commence his hearings in a matter of weeks.

In 1996 Mr Morris and Brisbane barrister Edward Howard were appointed to investigate the paper trail involved in the 1990 shredding by the Goss government of evidence taken by an inquiry into a Brisbane youth detention centre.

In their report the two lawyers said it was open to conclude that there had been breaches by an officer or officers of the Department of Family Services of the *Criminal Code* including s 129 (Destruction of Evidence) and s 132 (Conspiring to Defeat Justice) or s 140 (Attempting to Pervert Justice); in other matters, breaches of s 92 (1) of the *Criminal Code* (Abuse of Office); s 204 of the *Criminal Code* (Disobedience to Statute Law); s 55 of

the *Libraries and Archives Act*; and ss 31/32 of the *Criminal Justice Act*, and by a Minister ss 31/32 of the *Criminal Justice Act*.

No findings were made in relation to the Cabinet because they were not given access to the Cabinet record.

It is now known that Cabinet was aware at the time it approved destruction of the documents that the material was being sought by a firm of lawyers for potential legal action.

Mr Morris and Mr Howard also expressed concern that matters referred to in their report had been covered up for so many years.

The Borbidge government sent their report to the then Director of Public Prosecutions.

His response has never been made public (despite a recommendation from the House of Representatives Legal and Constitutional Affairs Committee of Inquiry into Crime in the Community that it be made publicly available).

On the basis of that advice, the government did not proceed with an inquiry – despite the Morris and Howard recommendation.

Widow protects the record

BECAUSE of events surrounding the 1990 destruction of records of an inquiry into a Brisbane youth detention centre, a Bundaberg woman moved to ensure the records of the local hospital and the Health Department did not suffer a similar fate.

She had a particular interest in ensuring the records were kept.

Her husband had been treated in the Bundaberg Hospital by the doctor at the centre of the Morris Royal Commission.

Her husband subsequently died and is regarded as one of the victims of the hospital tragedy.

The Independent Monthly has been told the woman's lawyers contacted the State Archivist on April 15 to ensure the relevant records were secured.

State Archives did not respond to a request for information about its actions following the approach by the woman's lawyers.

The Crime and Misconduct Commission, which is also investigating the Bundaberg hospital tragedy, said it wrote to the Health Department to ensure all relevant records were secured.

Like Commissioner Morris, it said it would use the full force of the law against anyone who destroyed material pertinent to its investigations.

(Its predecessor organisation, the Criminal Justice Commission, consistently said there was nothing wrong with anyone destroying evidence up to the moment a judicial proceeding was actually begun.

The CJC's erroneous view has meant that no action was ever taken against those who destroyed the records of the Brisbane youth detention centre inquiry).

The Crime and Misconduct Commission said it had taken action to secure the Health Department's records by writing to the department on April 28.



Peter Beattie

This was 13 days after the Bundaberg woman contacted State Archives.

Another to have said publicly that the full force of the law should be employed against anyone who shreds documents relating to the Bundaberg Hospital matter is the Premier.

Despite saying for years there was nothing illegal about his colleagues' destruction of the youth detention centre records, Mr Beattie told the media that anyone who did so with regard to the Bundaberg Hospital matter, would be dealt with.

Mr Beattie said anyone caught destroying evidence could expect to be charged.

“Anyone who does that is very courageous and very stupid,” Mr Beattie said on 4BC radio

“I just say to anyone in the system, beware, because Tony Morris is fiercely independent and that would be an offence and people would be charged.”