

The Sir Robert Garran Oration

Reinventing Government

Delivered by Hon Dr Carmen Lawrence MLA, Premier, at the 1992 National Conference of the Royal Institute of Public Administration held in Perth on 19 November 1992.¹

Sir Robert Garran was a leader in the movement towards federation. On 1 January 1901 he became the Commonwealth's first public servant: Secretary of the Attorney General's Department and Parliamentary Counsel. He went on to serve as a Chief Executive Officer for 31 years.

With Sir John Quick, he wrote the first major text on the Australian Constitution.

A classical scholar who read widely in several modern languages, Sir Robert wrote poetry, played several musical instruments and participated in art, literature and musical societies.

The decade of the 1890s was a period of great change for the people of the Australian colonies, as Australia approached her birth as a federation. Sir Robert was guided by a vision, commitment to change and community spirit in his contribution to the development of the nation and the beginnings of an Australian identity.

These are the same qualities that we need one hundred years later as we face up to constitutional issues that are just as fundamental as those with which Sir Robert grappled.

Sir Robert was reinventing government. One hundred years later we find ourselves doing the same.

In the 1990s we are again debating issues that go to the heart of our identity and systems of government.

The Special Premiers' Conference, which has been looking at the fundamental issue of the structure of the Federation, will be reconstituted in Perth next month as the Council of Australian Government to continue this work.

Across the nation our identity is under scrutiny in the continuing debate on republicanism.

In Queensland the Fitzgerald Royal Commission, in New South Wales the Independent Commission Against Corruption, and here in Western Australia the Royal Commission into the Commercial Activities of Government and Other Matters — all have focused attention on constitutional reform.

The Western Australian Royal Commission

I established the Western Australian Royal Commission in November 1990 as the only way in which to deal conclusively with allegations of corruption during the 1980s — and to put an end to rumour and innuendo which abounded in this State.

It was clear to me that what commentators have come to call the excesses of the 1980s had damaged our public institutions. Public confidence in our whole system of government was being eroded. It was becoming apparent that our system of checks had been falling. In the era of the big deal the checks usually provided through public scrutiny by the media and by Parliament were nowhere near rigorous enough.

The Government, of course, has to accept responsibility — but it is responsibility shared with the media, Parliament, and a system that malfunctioned.

My responsibility, having called the Royal Commission is now to act on its findings. I saw a pressing need in our community for two things to happen — details of the business dealings of the governments of the 1980s needed

¹ This is an edited version of the oration, originally published as 'Speech notes for the Sir Robert Garran Oration, 1992' on the Parliament of Australia, Parliamentary Library, Press Releases Database, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22media/pressrel/SBY10%22>

to be disclosed and the system needed reviewing, not only to prevent a recurrence, but also to take us into a new era of accountability and, integrity with public institutions, functioning efficiently and openly.

The Royal Commission, in broad terms, was charged with the work of finding out what happened and recommending ways in which to improve our system to prevent a repetition of the mistakes of the 80s. The job took almost two years, and cost \$30 million.

We now have the benefits of the Royal Commission's work. We know what happened and we have a comprehensive set of recommendations for reforms which when implemented will amount to a revolution in government and parliament in this State.

The Royal Commission wrote its report for publication in two parts. The first describes the events into which the Royal Commission inquired and reports findings. The findings amount to a damning indictment of some Government decisions. However, there is some comfort to be found in the Commissioners' observation that, and I quote... "there has been comparatively little evidence of illegal, or corrupt conduct." The second part recommends a wide range of changes to our system of government to prevent a recurrence of the events into which the Royal Commission inquired.

I welcome the recommendations. They confirm many of the changes I have insisted on since becoming Premier and will take us further in terms of reform than any government in Australia.

The Royal Commission identifies two complementary principles that express the values underlying our constitutional arrangements. The first is the democratic principle (I quote): "It is for the people of the State to determine by whom they are to be represented and governed." The second is the trust principle (again, I quote): "The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public."

The Royal Commission notes that both principles — and the commitment that they assume to the rule of law and to respect for the rights and freedoms of individuals — need to be translated into practical goals if they are to provide the basis for government in this State. It is to this end that the Royal Commission has made its 40 recommendations. The Government fully endorses the principles and accepts the need for the recommended changes.

Major recommendations from the Western Australian Royal Commission

The key to the reforms proposed by the Royal Commission is accountability of government and its administrative arms to the Parliament and the people.

The Commissioners found that Parliament in its present form does not adequately perform its role of ensuring the accountability of the executive and for that matter our accountability to the elected Parliament. Their primary responsibility to this inadequacy is to rebuild the relationship between the Parliament and the people on the one hand, and the Parliament and the Executive on the other. The Commissioners also recommend a shift towards greater judicial scrutiny of both the Parliament and the Executive.

The Parliamentary reforms start from the ground up with a comprehensive review of the electoral systems for both Houses of Parliament so as to make them more representative. This is especially significant in the case of the Legislative Council which is notorious for the extent of its electoral malapportionment.

The Commission proposes that the Legislative Council be constituted as a true house of review and relinquish any pretension that it is some sort of alternative House of Government. In particular it will lose its power to block Supply. Instead, it will be given a new role: that of scrutinising the Public Sector of the State. This can only be achieved after electoral reform is concluded satisfactorily.

The Commission puts forward a range of measures aimed at ensuring that the Parliament is adequately resourced to carry out its scrutiny of the Executive. These include:

- The creation of new Parliamentary agencies: a Commissioner for Public Sector Standards and a Commissioner for the Investigation of Corrupt and Improper Conduct.
- Radical enhancement of the powers, immunities and independence of the Auditor General.
- A new system of parliamentary committees.
- Changes to question time.
- Separate Budget arrangements for the Parliament.

Members of Parliament are also to be subjected to new accountability measures. In particular, the Commission has endorsed the Members of Parliament (Financial Interests) Bill and, subject to a handful of amendments, the Political Donations legislation introduced by my Government earlier in the year.

The Commission has also proposed that Parliamentary Privileges be modified to permit proceedings in Parliament to be questioned in courts and future royal commissions. This is a conclusion that is sure to excite further debate.

Greater judicial scrutiny is also to be applied to the Executive. The Commission recommends the establishment of a system of administrative appeals and judicial review of official decisions. It recommends a review of the criminal law as it applies to official conduct and it recommends the establishment of an investigative anti-corruption body to pursue improper and illegal conduct. The pursuit of improper official conduct will be assisted by legislation to protect whistleblowers.

The Executive is to be opened up directly to the public. The Commission endorses the Government's Freedom of Information Bill, albeit with some minor amendments. This is the strongest FOI legislation in Australia and will be implemented as a matter of priority. The Commission affirms the right of citizens to reasons for official decisions and recommends the urgent enactment of an Administrative Decisions (Reasons) Bill together with greater independence for the Ombudsman. The Commission also recommends a comprehensive review of the many secrecy provisions scattered amongst the statute books.

To underpin these open access reforms, the Commission proposes new government records legislation to ensure that information is complete and readily accessible.

Finally the Commission recommends sweeping changes to the structure, and management, including financial management, of the public sector. These changes are likely to result in a new Public Sector Management Act, State Owned Companies Act and new Audit legislation.

The Government's Response

In response, the Government agrees that parliamentary and electoral reforms are needed to ensure that both Houses are fairly elected and carry out their proper duties. These reforms go to the foundations of our parliamentary democracy. They are crucial to the realisation of the two principles enunciated by the Royal Commission.

Citizens must be satisfied that their Parliament is truly representative and fairly elected. They must also be assured that they can trust that Parliament is doing its proper job. The Royal Commission has made it clear that neither of these propositions currently holds true, particularly in the election and operations of the Legislative Council.

This State has a sad history of obstruction of electoral reform by the conservative-dominated Legislative Council. It is to be fervently hoped that the recommendations of the Royal Commission will give the conservative parties the resolve to support the recommended changes, although their recent public pronouncements on the question are not encouraging.

The Government agrees — with some degree of passion, I must admit — to all the recommendations in this area. It agrees that the Legislative Council should be the House of review.

The Royal Commission's view that the Council should not have the power to block Supply also has had long-standing support from the Government. This is the second time that a royal commission has proposed that the

Council should not have this power. (The Royal Commission Into Parliamentary Deadlocks came to the same conclusion.) We will act to implement this proposal.

The issue of resolution of deadlocks on matters other than Supply will be referred to the Commission on Government, which I have already announced will be established in line with a recommendation of the Royal Commission.

The Royal Commission recommended that a commission should be established by legislation and be known as the Commission on Government. Modelled, in large measure, on the Electoral and Administrative Review Commission of Queensland (EARC), the function of the commission should be to inquire into the matters the Royal Commissioners identified and to report its recommendations for change to Parliament.

The conduct of this process of inquiry should involve extensive public consultation.

The new commission should:

- a) be comprised of a full-time chairperson and appropriate part-time members;
- b) operate with the assistance of appropriate full-time research and support staff; and,
- c) have the capacity to engage consultants as necessary to expedite the exercise of its functions.

The life of the commission should be limited to two years from the date of the appointment of the members of the commission and should be extended only for good cause.

The Government will refer to the Commission on Government reviews of the electoral systems of both Houses of Parliament, as recommended by the Royal Commission.

In its report the Royal Commission emphasised that public confidence in the Parliament could only be sustained if it were truly independent of the Executive in carrying out its watchdog functions. In particular, the Commissioners stated that Parliament should not be beholden to the Executive government for its funding, nor should the government be in a position to stifle Parliamentary scrutiny by withholding resources.

The Commission recommended that Parliament should be made financially independent within clearly defined budgetary limits. The Presiding Officers and the heads of the Parliamentary Departments should be free to manage the resources which enable the Parliament to carry out its functions. As a corollary, however, the Commissioners require that the Parliament be fully accountable for its own financial management, and that should publish its accounts and be subject to scrutiny by the Auditor General. Although these measures are to be referred to the Commission on Government, they reflect part of the Government's ongoing program of Parliamentary Reform.

On the 19th of October this year, cabinet decided that as from next year the funding of Parliament will be proposed in a separate Parliamentary Appropriation Bill. This Bill will be prepared and presented to Parliament by the Treasurer, but in consultation with the Presiding Officers. Provision for advances to the Presiding Officers for unforeseen contingencies would be made, thereby avoiding the need for the Parliament to approach the Executive during the financial year for approval for the funding of Parliamentary operations.

At the very least these reforms are a significant step in the direction envisaged by the Royal Commission.

It is my hope that early next year the new Parliament will act on its own initiative to revitalise its committee systems. I would expect, for example, that the Legislative Council would reconstitute its committee system to reflect its new role of a House of Review charged with the scrutiny of the public sector. I also look forward to such initiatives as the establishment of Joint Estimates Committee and a joint Public Accounts and Expenditure Review Committee.

The Public Accounts and Expenditure Review Committee is of considerable importance in the new order envisaged by the Royal Commissioners. It will have a much more direct relationship with the Auditor General, who in turn will play a much more powerful and wide ranging role in the supervision of State finances.

I will support the provision of adequate resources to this committee, and in particular I will take steps to ensure that it is provided with adequate professional support.

I have in mind a system where, eventually, the career of every ambitious Treasury official will include a stint of a year or two working for the Public Accounts Committee. This will have two benefits. It will ensure that the Committee has access to an inside working knowledge of the State financial system and, conversely, it will ensure that an influential group of senior public officials acquire a deep understanding of their obligations in respect of public accountability.

The Government now has before the Parliament legislation for a range of accountability measures — freedom of information, public disclosure of MPs' financial interests and public disclosure of political donations. The Royal Commission's recommendations on these issues are consistent with the provisions of the Bills and with long-standing policies of this Government. The Government will carry out the recommendations of the Royal Commission on these matters. It will move to accommodate the amendments to legislation recommended by the Royal Commission in the current session of Parliament.

Recommendations for an administrative appeals process are in line with Government commitments. The Government will implement a process as proposed by the Royal Commission in a systematic way, starting with the drafting of the necessary legislation. It supports the proposed review of secrecy laws in this State and will refer this to the Commission on Government for Implementation. It also supports the recommended moves for whistleblower legislation, which will also be dealt with by the Commission on Government.

The Commission's Views on the Role and Management of the Public Sector

The Royal Commissioners have recommended reforms that will result in sweeping changes to the management of the public sector and the relationship between government agencies and their ministers and the Parliament. Central to these changes is the role of Parliamentary Agencies.

The powers, immunities and jurisdiction of the Auditor General are to be profoundly changed. The Auditor General will be given the powers and immunities of a royal commission, and his jurisdiction will be expanded to cover every public agency. The Office of the Auditor General will be established under separate legislation and the Financial Administration and Audit Act will be reformed in a number of important respects. In particular, provision will be made for compulsory disclosure of guarantees and sureties, and undertakings will require Cabinet approval. These measures reflect, in part, legislation that has been under preparation for some months, as do proposed amendments to enhance the independence of the Ombudsman.

The Royal Commission proposes two new Parliamentary agencies: the Commissioner for the Investigation of Corrupt and Improper Conduct and the Public Sector Standards Commissioner. These new agencies will exist in addition to the large number of existing and proposed statutory bodies and mechanisms charged with the scrutiny of official conduct. Such agencies include:

- the Ombudsman;
- the Public Service Commissioner;
- the Auditor General;
- the Director of Public Prosecutions;
- the specialised Police anti-corruption units;
- the Equal Opportunity Commission;
- the Royal Commissions Act;
- the Electoral Commission;
- the Library Act;
- the proposed Administrative Decisions (Reasons) Act

- the Information Commissioner contemplated in the Freedom of Information Bill;
- the proposed Administrative Appeals body;
- the Official Corruption Commission;
- the Houses of Parliament and their Standing and Select Committees;
- the Australian Securities Commission; and
- the various judicial or quasi-judicial appeal and regulatory bodies.

Although I accept the need for these new bodies, it is my view, and indeed the express view of the Royal Commissioners, that there must be greater co-ordination amongst those bodies responsible for preventing maladministration, misconduct and corruption in the public sector. Rationalisation of these functions will be necessary.

In 1988 legislation was enacted to establish an Official Corruption Commission, which had a limited review and referral function; it was not an investigative body. Late last year that commission was given enhanced powers; by the Parliament and a Select Committee was established to review its functions. That committee reported earlier this year and was then reinstated for the purpose of preparing legislation to implement its recommendations. The Government provided assistance for that process, including access to Parliamentary Counsel. The resulting Bill was introduced by the Chairman of the Committee, Independent member, Mr Ian Thompson, MLA, and received its second reading last week.

In his second reading speech, Mr Thompson stated that the object of the amendments and the proposed Joint Standing Committee on Official Corruption was to improve anti-corruption measures in the State and, most importantly, give Western Australians greater confidence that the proper steps were being taken to minimise official corruption in the community.

The Select Committee studied the New South Wales and Queensland anti-corruption commissions and formed the view that each was something of an over-reaction following the royal commissions in those two states. While my Government accepts the recommendation of Western Australian Royal Commission, I believe that Mr Thompson sounds a salutary note of caution.

Apart from the risk of unnecessary and extremely expensive duplication, attention must also be paid to the question of the extent to which civil liberties and the privacy of individuals should be sacrificed to permit the operation of a necessarily legalistic and cumbersome Inquisitorial process. This is especially so when the object of the exercise is aimed as much at public reassurance as at rooting out actual corruption.

Nevertheless, I see great potential benefits in such a body if it is properly constituted and empowered. In particular it has great potential as an educative body, and in ensuring some uniformity of approach amongst the agencies concerned with corruption and impropriety.

The principal specific task of the Improper Conduct Commissioner will be the investigation of allegations or complaints of corrupt or improper conduct. It will, for all intents and purposes, be a standing royal commission, with the attendant powers and immunities. The commissioner will be empowered to make findings of fact and refer matters to the appropriate authority for prosecution or other appropriate action. Its hearings will be public, unless there is adequate reason for private hearings. The commissioner will be charged with recommending preventative measures and educating public officials and the public generally on strategies to combat improper conduct.

The conduct that will be scrutinised by the Improper Conduct Commission

Corrupt conduct is defined by reference to the Criminal Law. The Royal Commission has recommended a review of that law which will commence at the earliest opportunity.

The definition of improper conduct is more difficult. When I called the Royal Commission, I made sure that its terms of reference extended to impropriety as well as corruption. This was because I suspected that the problems of the 1980s were caused more by ignorance, incompetence or impropriety than criminal corruption. That view has been vindicated by the First Report of the Royal Commission, which found little evidence of illegality or corrupt behaviour. As a consequence, the Commission paid a great deal of attention to the question of improper conduct, and we now have its learned view as to the scope of that term. This should be of considerable interest to public sector managers and those involved in prescription of public sector standards and ethics.

The definition proposed by the Royal Commission is as follows:

"Improper conduct should be defined as —

- 1) Any conduct of any person (whether or not a public official) that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority;
- 2) any conduct of a public official or former public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions;
- 3) any conduct of a public official or former public official that constitutes or involves a gross departure from the standards of administration which the public is entitled to expect; or
- 4) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her own benefit or for the benefit of any other person.

It is not yet clear where the jurisdiction of this new body ends and that of the Ombudsman or the police begins, but that will be clarified in the draft Commission for the Investigation of Corrupt and Improper Conduct Bill that I hope will be released for public comment early in the new year.

Most of the Royal Commission's recommendations to improve the integrity of government will also have a substantial effect on public sector management. In broad terms these impacts include:

- a shift of accountability towards public sector managers;
- more systematic and rigorous parliamentary scrutiny supported by agencies such as the Auditor General and the Ombudsman;
- an obligation to justify decisions and actions to the public and Parliament;
- reversal of the onus of secrecy provisions, including FOI;
- reinforcement of Auditor General's role, scope and powers, including "value for money" audits;
- affirmation of the accountability of Government Trading Enterprises as publicly owned enterprises to the public and to Parliament;
- recognition of the ethical expectations of public sector employees with targeted codes of conduct; and
- a requirement for a comprehensive and consistent approach to standards and practices across the public sector.

These directions reinforce and complement those outlined in the Government's recent White Paper on public sector management, 'Managing for Balance'. They have in common the need to respond to broad community expectations of openness and accountability in Government in a climate of tight resources and high demand for services.

'Managing for Balance' provides a public sector reform blueprint for the 1990s. The paper describes a public sector that finds a balance between divergent expectations and competing demands. It seeks to ensure that the public can expect more responsive government, better quality services, more access to information, greater public involvement in decision making and a focused, more efficient and accountable public sector. To achieve these

results public sector employees will require a great deal of training and support to be able to operate in a more creative, flexible and responsive way.

The second new Parliamentary Agency recommended by the Royal Commission is the Commissioner for Public Sector Standards. The Royal Commission was critical of the complexity, fragmentation and lack of standardisation of the administrative system. The Commission also noted that in a period of changes in administrative style and practice, by no means unique to WA, the development or appropriate safeguards did not keep pace.

The Commissioners charge the Government with a complete and systematic review of the entire administrative system, resulting in a Public Sector Management Act. They express the view that the results of changes in public sector management in the last decade have shown that as far as public sector integrity is concerned (I quote):

"the 'managers themselves, that is, those in the highest echelon of the public sector, cannot have this responsibility left to them alone. We believe that only an appropriately resourced and empowered independent agency can be relied upon to maintain proper standards."

The Commissioner for Public Sector Standards is intended to fill this gap. The commissioner would report to Parliament and be charged with scrutiny and review of the organisation, management and operations of the entire public sector and be empowered to set and enforce basic principles and standards. Specific responsibilities of the Commissioner would include monitoring ethical training, the preparation of codes of conduct and ensuring compliance with standards in recruitment, promotion and discipline.

The Royal Commissioners observe, and I concur that careful attention will be needed to avoid conflict between the jurisdiction of the Public Sector Standards Commissioner and the legitimate policy and management role of the Executive.

The Royal Commissioners also observe that the implementation of this proposal would render redundant the existing office of the Public Service Commissioner. It is an observation with which I agree and which the Government will act on. I can see no reason why many of the current Public Service Commission's Public Sector Employment program functions, covering Equal Opportunity, Personnel Principles, Standards and Systems and Merit Protection cannot be transferred quickly to an interim and independent Commissioner for Public Sector Standards. And while the Government will quite properly retain decision-making authority over public service appointments I am very happy to have independent oversight of these processes including independent consideration of appeals and other matters arising from Public Sector appointments.

Residual functions of the current Public Service Commission including many of those under its Public Sector Management Program will be transferred to other central government agencies where I have long believed they belong anyway.

Reforms will restore the credibility of the public service

I believe that these significant reforms go a long way to restoring the credibility of what I have always found to be a competent and highly principled public service in WA.

The Royal Commission Report pays special attention to government trading agencies and statutory authorities. Such agencies were at the centre of many of the transactions that were the subject of adverse findings by the Royal Commission.

The difficulties identified by the Commission stem from uncertainty as to the extent to which certain authorities are subject to governmental direction, the manner in which that direction is properly exercised, and conflicts of interest on the part of public servants appointed to the boards of authorities which fall within their own ministers' portfolios.

The Commission proposes substantial reforms which would make these matters explicit, remove conflicts and uncertainty, apply uniform standards of probity and ensure proper accountability of Government Trading Enterprises which would extend to the members of their boards.

In this speech I have covered only the most significant and pressing matters arising from the Royal Commission recommendations. Even the relatively small territory that I have been able to cover today will give an idea of the huge job we have undertaken.

We have embarked on a massive program of reform, on a mission of unprecedented scale in this State. My greatest hope is that all sections of the Western Australian community, including my esteemed Opposition, will embrace the program with equal enthusiasm. However, I note in passing that their attempts to rule out reform of their stronghold in the Legislative Council strikes an early discordant note.

The result of this program of reform will be a better, more accountable and more open system of government. When that is achieved all the pain, all the work and all the endeavour associated with this Royal Commission will have been worthwhile.