the independent MONTHLY

'... in pursuit of the truth'

Shredding matter a 'blot' on the Rule of Law – Springborg

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ACCORDING to the correspondence seen by *The Independent Monthly*, the current DPP responded to a letter from Mr Springborg by advising "the preliminary decision whether or not to charge any person with a criminal offence is generally a matter for the discretion of the police".

In turn, the Police Commissioner suggested it mght be appropriate for the Opposition Leader "to refer this matter to the CMC".

In their response the CMC said the former DPP had considered the matter on two occasions and had advised against prosecution.

[On the first occasion it had been suggested that the wording of the Criminal Code was subordinate to the wording of a Supreme Court form.

On the second, according to a press release from the then-Premier Rob Borbidge, the DPP had advised: "Very considerable time has been expended by a good many people in pursuit of the truth regarding the Heiner Matter. One has to wonder whether the public interest requires further exploration or whether it is now time to put the matter to rest".

On the day before the press release was issued the then-DPP prosecuted a man in the District Court for either stealing or having in his possession at some time during the previous 20 years, goods the trial judge described as probably worthless. See story this page.Editor]

In his letter to Mr Springborg, the CMC Chair referred to the advice given to the Borbidge government by the former DPP.

"Mr Miller provided a lengthy advice to the then Premier and decided that no prosecution action was warranted," Mr Needham wrote.

"That advice has not been made public and the Commission does not have a copy of it.

"However, it appears from information made public at the time by the then Premier, Mr Borbidge, that Mr Miller's advice went beyond matters of law, and also considered whether the public interest would be served by pursuing the matter further.

"It seems that, as far back as 1997, the then DPP considered that the age of the allegations in this matter militated against prosecution action."

In a response on July 20, Mr Springborg wrote: "As I have previously indicated, I have no objection to the release of those documents

Lawrence Springborg

to you by the Cabinet Office in order that you might fully consider the advice of Mr Miller and compare it with the authoritative interpretation adopted by the Court of Appeal in the matter of Ensbey".

Mr Springborg went on: "There can be no doubt the shredding of the Heiner Inquiry documents was and remains a major issue of public administration and political controversy in Queensland".

He went on to say that the shredding had been an act by executive government "designed to cover up major areas of maladministration in the administration of a juvenile institution and major accusations of sexual mistreatment and other sexual offences".

"To draw a conclusion that the Director of Public Prosecutions has apparently drawn, and which your Commission has apparently compounded, that these are not matters of public importance going to the very heart of the administration of our Criminal Justice System, is difficult to comprehend," Mr Springborg said.

Mr Springborg said that because of the Baptist pastor case, "the justifications adopted by successive governments and Directors of Public Prosecutions not to explore these matters fully to determine if criminal charges should be laid in relation to major issues of public malfeasance by members of the Queensland Cabinet no longer exist".

Mr Springborg said the matter had to be completely investigated "lest the whole issue remain as a continued blot upon the application of the Rule of Law in the state of Queensland".

The correspondence between the Opposition Leader and the CMC began in May, when Mr Springborg wrote to Mr Needham to request that the Commission reconsider the legality of the shredding in light of the 2004 House of Representative's Standing Committee on Legal and Constitutional Affairs report on Crime in the Community.

The Committee, after investigating matters and motives surrounding the 1990 shredding, concluded Ministers had broken the law, and recommended that the entire Goss Cabinet "be charged for an offence pursuant to section 129 [Destruction of Evidence] of the Queensland Criminal Code Act 1899".

With regard to correspondence with the current DPP and the Police Commssioner, Mr Springborg advised the CMC chair: "Neither of these bodies indicates any willingness to confront the issue of conflicting advices and an authoritative interpretation being laid down by the Court of Appeal in relation to the meaning of Section 129 and the consequences that flow from there."

He then went on to suggest that the failure of both the DPP and Police Commissioner to apply an authoritative interpretation by the Appeal Court in relation to the Goss Cabinet shredding "of itself constitutes official misconduct".

However, Mr Needham responded that the CMC did not consider Mr Atkinson or Ms Clare had acted in any way which raised a reasonable suspicion of official misconduct.

CMC Chair Bob Needham said the correspondence was with Mr Springborg and he did not wish to comment on it publicly.

Mr Springborg said the matter had to be completely investigated 'less the whole issue remain as a continued blot upon the application of the Rule of Law in the state of Queensland'

The public interest and The Great Train Robbery

THE day before Premier Borbidge issued his press release in 1997 in which he quoted the DPP as wondering if the public interest would be served by pursuing the shredding affair any further, a man was prosecuted in the District Court on a charge of either stealing or receiving.

Like the Baptist pastor, the defendant did not occupy a particularly prominent position in the food chain.

He was a Railway Attendant on the Sunlander. His job was to clean the compartments after they had been vacated by passengers and and replenish the toiletries and the like that had been used.

When police raided his home in 1995 they found a few dozen little bottles of shampoo, conditioner, soaps and the like and he was charged with theft.

He was committed and eventually went to trial on June 10, 1997.

District Court Judge Manus Boyce said he was concerned that there was no "particularity" as to when the theft/thefts/receiving of the goods of probably "very little value" had occurred.

It was eventually settled that the offences must have been committed some time during the defendent's period of employment with Queensland Rail ... some time in the previous 20 years!

A jury was empanelled, and in the public interest, the case against the man commenced.

However, in evidence, the first witness raised some matters that appeared to cast a different glow on how the defendent may have come into possession of the goods of " little value". It appeared he may have obtained them quite legally.

Whatever, over lunch the DPP and his deputy advised the prosecutor that he should seek the return of the indictment and enter a "nolle prosequi".

In dismissing the matter, Judge Boyce said it was probably the right decision.

'One is left with a distinct taste of whitewash in one's mouth'

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IN RELATION to the CMC's claim that there was a "lack of utility in proceeding so long after the events in question" took place, Professor Field said there was no statute of limitation on criminal conduct.

"The present DPP regularly prosecutes child molesters for matters which go back many years and I have distinct memories of a case involving a serial paedophile whom I prosecuted for the then DPP, Miller, in which the earliest charge dated back to 1947," he said.

While the age of a matter was a major reason not to prosecute, Professor Field said that claim was weak in light of the fact the matter had been reported to the police in 1994.

"I really think it's unfair and misleading to claim that it is too old when the matter was reported at the time and they did nothing about it.

"It's not a matter of being too old, it just wasn't followed up," he said.

The final reason used to justify no further action be taken was that the Goss Cabinet, involved in the shredding, acted on erroneous advice from the Crown Solicitor.

While the CMC admitted "mistake of the law is no defence to a criminal offence" they considered it "relevant" in exercising their discretion not to prosecute.

Professor Field expressed concern over such a policy.

"A moment's reflection reveals how dangerous a policy this could be, encouraging future Ministers to indicate to their senior public servants what advice they would like to receive in writing," he said.

Professor Field said the reasons given for not prosecuting were unacceptable and he believed the CMC was neglecting its proper function by adopting such views.

"They have clear evidence of the facts, and an authoritative interpretation of the applicable law.

"Short of a letter of encouragement from the Pope, it is difficult to imagine what else they might require in order to incite them to into performing the function for which they exist," he said.

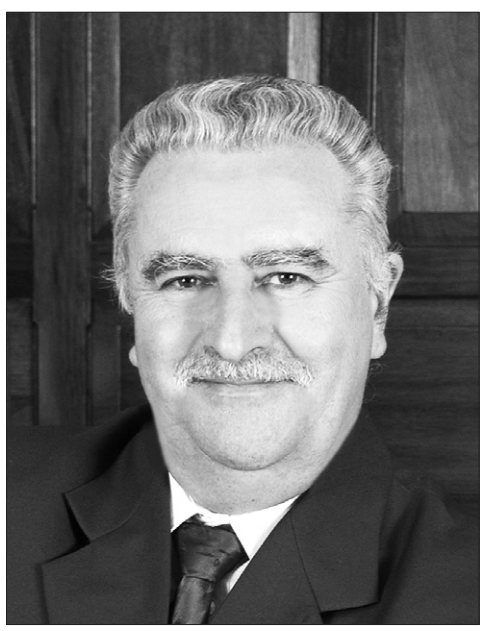
Professor Field also suggested the letter further demonstrated "double standards" in Queensland's legal system.

"If they wish to play the 'nobody knew the true state of the law until recently' card then, in order to be consistent, they should not 'start the clock ticking' until they were so aware."

"The law may be taken to have been clarified by Ensbey [a man who was prosecuted for shredding pages from a girl's diary, five years after the event took place] which was only a year ago," he said.

"The whole affair raises serious concerns regarding the impartiality of the advice received by Government Ministers from their senior professional advisers."

"One is left with a distinct taste of whitewash in one's mouth," he said.



Professor Field