

NEWMAN'S POISONED LEGACY¹

Stephen Keim
Alex McKean

The LNP has released the Borbidge/Sheldon report, the product of a review of the factors that led to its surprising electoral loss in January, this year. The report is being praised by its authors as a fearless and frank appraisal of the failures of the Newman government.

But the report leaves many matters unaddressed.

While it does identify that the Newman government was arrogant and alienated stakeholders across the board, it does not address what was central to many voters rejecting outright a second LNP term. This was the government's track record of attacking the independence of key institutions whose role it is to keep executive power in check and to protect the rights of the individual.

The legacy of the former Attorney-General, Jarrod Bleijie, working with his former premier, requires further attention. Apart from Newman himself, Mr Bleijie, more than any other, is associated in the public mind with a disregard for principles and a willingness to attack key independent institutions. It is these qualities which have so damaged the LNP brand.

The Borbidge/Sheldon report correctly identifies that the Newman government did not listen well or react positively to even mild criticism. When President of the Court of Appeal, Margaret McMurdo, gently, [drew attention](#) to the fact that the LNP government had appointed many more men than women to the bench, her words provoked [an extremely hostile response](#) from Mr Bleijie which included the selective use of confidential conversations with the President, herself.

But one act of the Newman/Bleijie duo continues to wreak havoc upon the institutions upon which the State depends for its safety, security and the health of its economy: the Queensland justice system. That act was to elevate the then Chief Magistrate, Judge Tim Carmody, to the office of Chief Justice of Queensland.

Mr Newman and Mr Bleijie did not have to rely upon [suggestions](#) that Judge Carmody did not have sufficient legal experience or deep enough legal knowledge to know that what they were doing was not in the interest of the State.

When Chief Magistrate Carmody made his new "[new sheriff in town](#)" speech, when refusing a number of bail applications, Mr Bleijie might have been gratified for the political support from a leading judge for the Attorney's new bikie laws. He should have been aware, however, that such partisanship on the part of a judicial officer was not to be encouraged.

The same mixture of warm pleasure and loud warning bells should have been present when Chief Magistrate Carmody [came to Mr. Bleijie's defence](#) in the wake of his attack on President McMurdo.

¹ This article first appeared in *Justinian*, 4. 6. 15.

A third example of Judge Carmody's unsuitability for the office which was to be bestowed upon him was his willingness to be part of the political campaign in support of his own appointment. Judge Carmody agreed to attend the announcement press conference with Mr Newman and forcibly [proclaimed his own independence](#).

The pattern of Mr Newman and Mr Bleije's encouragement of actions by Judge Carmody which were positively unjudicial was becoming set in stone. The evidence of recent weeks suggests that that pattern may run much deeper than the public was allowed to see.

However, once he was appointed, Chief Justice Carmody had the opportunity to put his displays of partisanship behind him. As we have [previously written](#), the Chief Justice might have put his head down; worked hard; and, eventually, earned the respect of even his most grudging critics. Others had done it before him.

In doing so, the Chief Justice might have provided a lucky bounce for the legacy of Newman and Bleije and, ironically, strengthened the institutions they had sought to weaken.

One sign that the Chief Justice was not turning his world around involved observations by journalists that he was scheduled to [spend less time in court](#) than other judges and had provided very few written judgments.

The retirement speech of Justice Wilson in late March indicated that the destructive effect of appointing Judge Carmody went beyond just leaving the other judges shorthanded when it came to the day to day grind of judging.

[Justice Wilson's speech](#) still provides informative reading. Justice Wilson make specific allegations, but his general charge also raised serious concern. He said that it was the contrast between what the Chief Justice said in public statements and the reality of what was happening which was causing a loss of morale on the court so significant as to cause even junior judges to consider stepping down. It was the inability of the judges to canvass these matters in public that had driven Justice Wilson to speak.

Of the four matters which Justice Wilson raised, that which was most concerning for the justice system was the allegation that the Chief Justice had, until other judges intervened, been engaged in interfering with a long standing protocol which decided, ahead of time, which judges would sit in the Court of Disputed Returns.

At the end of January, 2015, an election was held and the result was on a knife edge. An application to the Court of Disputed Returns had been foreshadowed and the result of that case might decide the result of the election.

Particularly, in circumstances where the Chief Justice's appointment had been criticised for his apparent partisanship, common sense, as well as a sense of integrity, would guide any new Chief Justice to place as much distance as possible between himself and the processes and decisions involved in appointing the judge to the Court of Disputed Returns.

But that was not the Chief Justice's preferred path.

Further evidence of the damage being caused to the institutions of justice by Mr Bleije's choice of Chief Justice arose during the Brett Cowan appeals.

In responding to the possibility that a meeting with a social campaigner during the currency of the appeals may have raised an impression of bias, Chief Justice Carmody accused President McMurdo of attempting to improperly influence him and the lawyers acting for Mr Cowan of seeking to profit by raising points on behalf of their client.

Of all the qualities that judges need, an ability to remain imperturbable in the face of criticism is one of the most important. Trials are places where ideas are floated and questioned and an attack on a judge's ideas must not be perceived by the judge as a personal attack.

The events of the Cowan appeal, however, showed the Chief Justice displaying extreme personal sensitivity and striking back at his judicial colleagues and at the lawyers whose duty it was to raise all points available to their client.

In April, Chief Justice Carmody foreshadowed that he might resign. Some interpreted this as no more than a strategic move in a campaign to outflank his critics.

Then, in an [exclusive interview](#), published on 25 May, the Chief Justice announced that he was prepared to resign at a price. He required compensation for giving up his salary, three years before he would be eligible for a judicial pension.

The Chief Justice [referred to](#) serious cultural and structural problems within the judiciary that had their origin and were festering long before his appointment. He accused his colleagues of being resistant to change and modernization.

The Chief Justice stated that he was appointed to bring in [needed reforms](#). Part of the Chief Justice's price for his resignation was that the government commit to an unspecified program of reforms. He had [promised to outline](#) the content of his demanded reforms in a speech on 29 May but the speech was cancelled.

Apart from mention of a judicial commission (to assist in recommending judicial appointments and in dealing with complaints against judges) and a suggested program of televising the courts, there seems to be no indication that Justice Carmody has proposed any reforms of the court system in the recent past. Neither of the two suggestions he has made has received any public resistance from his fellow judges.

His demand for a fair price for his resignation does, however, raise deeper questions about the damage being done by the appointment of Chief Justice Carmody by Messrs Newman and Bleije.

The Chief Justice has couched his attack on his fellow judges as an attack on the heritage left by his predecessor, the current governor of Queensland, Paul de Jersey. Chief Justice de Jersey served in that role for over 16 years. He was a fine, hardworking jurist. He was highly respected as the public face of the courts. He was regarded as standing up for the courts as an institution against governments of all political colours without straying into the overtly political so as to damage the courts.

No one could have done more than the current governor to achieve Justice Carmody's [stated objective](#) of creating a court system that the people of Queensland could respect and trust; a court system that was accountable for what was done not only through the court's judgments but through the conduct of the court's judges and how the courts treated other human beings.

Mr Newman appeared to have recognised Chief Justice de Jersey's fine legacy by choosing him to head the executive and represent the Crown in Queensland.

Chief Justice Carmody has, however, by his political campaign for his own future, launched an attack on the court system which forms so great a part of the de Jersey legacy.

Even more ominous is Chief Justice Carmody's reference to the needed reforms he [was appointed to bring in](#).

Was Chief Justice appointed by Mr Newman and Mr Bleije with an agenda of changes that they wanted made to the way the courts operated? If so, what were these changes? Did Chief Justice Carmody believe that changes to the protocol for appointment of judges to the Court of Disputed Returns was part of this agenda? Was his attack on the fellow members of the appeal bench and on the lawyers appearing for Mr Cowan part of the grand vision?

The idea that a head of jurisdiction is appointed to bring in an agenda of reforms may yet be the most disturbing aspect of the Newman/Bleije attack on the institutions of justice in Queensland. It challenges the whole concept of an independent judiciary.

In place of the cancelled reform speech, last Saturday, another, this time unsourced, story appeared. This article portrayed a recorded conversation between the Chief Justice and two other justices of the court as a set up by the other two judges. At the same time, release pursuant to the Right to Information Act of that recording, and other documents going to the matters discussed by Justice Wilson, has been held up in the consultation phase by at least one judge who wishes to delay their release.

There is no prospect that Chief justice Carmody's price for his resignation will be met by the executive.

The damaging legacy of Mr Newman's and Mr Bleije's choice for Chief Justice may yet continue for some time.