



ROYAL COMMISSION ON the activities of the Federated Ship Painters and Dockers Union

FINAL REPORT, Volume 1

The Government of the Commonwealth of Australia
and
The Government of the State of Victoria

ROYAL COMMISSION ON THE ACTIVITIES OF THE
FEDERATED SHIP PAINTERS AND DOCKERS UNION

Commissioner: Mr Frank Costigan, Q.C.

Final Report

Volume 1

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26 October 1984

Your Excellency,

In accordance with Letters Patent dated 10 September 1980, I had the honour to present in March, July and December 1981, July 1982 and July 1983, Interim Reports of the Royal Commission into the Federated Ship Painters and Dockers' Union.

I now have the honour to present to you my Final Report of the Royal Commission and I return herewith my Letters Patent.

I have the honour to be sir,

Your Excellency's most obedient servant,

A handwritten signature in dark ink, appearing to read 'Frank Costigan', with a long horizontal stroke extending to the right.

Frank Costigan
Commissioner

His Excellency the Rt. Hon. Sir Ninian Stephen,
A.K., G.C.M.G., G.C.V.O., K.B.E.,
Governor-General,
Government House,
CANBERRA A.C.T. 2600

26 October 1984

Your Excellency,

In accordance with Letters Patent dated 1 October 1980, I had the honour to present in March, July and December 1981, July 1982 and July 1983, Interim Reports of the Royal Commission into the Federated Ship Painters and Dockers' Union.

I now have the honour to present to you my Final Report of the Royal Commission and I return herewith my Letters Patent.

I have the honour to be sir,

Your Excellency's most obedient servant,

A handwritten signature in dark ink, appearing to read 'Frank Costigan', with a stylized flourish at the end.

Frank Costigan
Commissioner

His Excellency Rear Admiral Sir Brian Murray,
K.C.M.G., A.O.,
Governor of Victoria,
Government House,
MELBOURNE Vic. 3000

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia
and Her other Realms and Territories, Head of the
Commonwealth:

TO FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WE DO by these Our Letters Patent issued in Our name by Our
Governor-General of the Commonwealth of Australia on the advice
of the Federal Executive Council and in pursuance of the
Constitution of the Commonwealth of Australia, the Royal
Commissions Act 1902 and other enabling powers, appoint you
to be, on and from 1 October 1980, a Commissioner to inquire,
for the purpose of the exercise and performance of the powers
and functions of the Parliament and Government of the
Commonwealth, whether the Federated Ship Painters and Dockers
Union (hereinafter referred to as "the Union") or any officer
or member of the Union has engaged in illegal activities in
relation to Shipping engaged in trade and commerce between
Australia and places outside Australia or among the States or
ships operated by, or on behalf of, the Commonwealth or in
relation to any naval establishment within the meaning of the
Naval Defence Act 1910:

AND, without restricting the scope of your inquiry, We direct
you, for the purposes of your inquiry, to give particular
attention to the following questions:

- (a) whether any executive, administrative or other body
forming part of, or established by, the Union has
been used, or is being used, for the purposes of



ENTERED ON RECORD by me, in the Register of Patents No. 15, Page 33, .
This tenth day of September 1980. Secretary to the Federal Executive Council
Reginald Whited

2.

illegal activities, other than activities involving only breaches of laws, whether of the Commonwealth or a State, relating to trade unions;

- (b) whether the Union or any of its officials or members has been or is engaged in demanding or receiving payments (other than payments of an ordinary commercial nature or payments in accordance with an industrial award or agreement in respect of work actually performed or to be performed) from employers or other persons in relation to ships engaged in trade and commerce between Australia and places outside Australia or among the States, in relation to ships operated by, or on behalf of, the Commonwealth or in relation to any naval establishment within the meaning of the Naval Defence Act 1910 and, if any such payments have been made -
- (i) the persons by whom and to whom any such payments have been made;
 - (ii) the reasons for, or the purpose of, any such payments;
 - (iii) the subsequent or proposed use or disposal of any such payments;
- (c) whether the Union or any officers or members of the Union have engaged in illegal activities in relation to the election or appointment of officers of the Union or the conduct or purported conduct of the Union's affairs;
- (d) if the Union or any officers or members of the Union have engaged in activities of any of the kinds



3.

referred to in this or the preceding paragraphs,
whether the employment conditions applying
to the work of ship painters and dockers have
contributed to the development of those activities:


AND We direct you to make such recommendations arising out
of your inquiry as you think appropriate, including
recommendations regarding the legislative or administrative
changes, if any, that are necessary or desirable:

AND We further direct that any finding that the Union or any
officer or member of the Union has engaged in conduct
amounting to a criminal offence be made only on evidence,
admissible in a Court of Law, sufficient to place the Union,
officer or member on trial for that offence.

AND We further direct that, in making your recommendations,
you have regard to the announced intention of the Government
of the Commonwealth to introduce a system of reporting of
demands for, and payments of, monies following the report
of the Royal Commission into Alleged Payments to Maritime
Unions by the Honourable Mr Justice Sweeney:

AND We declare that you are authorized to conduct your inquiry
into any matters under these Our Letters Patent in combination
with any inquiry into the same or related matters that you are
directed or authorized to make by any Commission issued,
or in pursuance of any order or appointment made, by any of
Our Governors of the States:

AND We require you as expeditiously as possible to make your
inquiry and -

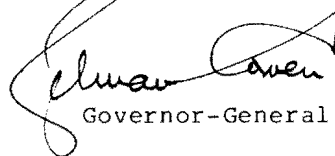
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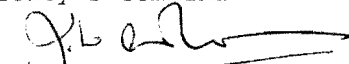
- (e) not later than 31 March 1981, to furnish to Our Governor-General of the Commonwealth of Australia an interim report of the results of your inquiry; and
- (f) not later than 30 September 1981, or such later date as We may be pleased to fix, to furnish to Our Governor-General of the Commonwealth of Australia a report of the results of your inquiry and your recommendations.

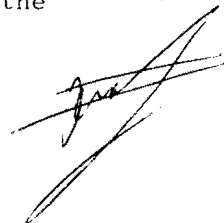
WITNESS His Excellency
Sir Zelman Cowen, Knight
of The Order of Australia,
Knight Grand Cross of The
Most Distinguished Order
of Saint Michael and Saint
George, Knight Grand Cross
of The Royal Victorian Order,
Knight of The Most Venerable
Order of the Hospital of
Saint John of Jerusalem,
one of Her Majesty's Counsel
learned in the law, Governor-
General of the Commonwealth
of Australia and Commander-in-
Chief of the Defence Force.

Dated this *Ten*th
day of *September* 1980.


Governor-General

By His Excellency's Command


~~Minister of State for Trade and
Resources for and on behalf of the
Prime Minister~~



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WHEREAS by Letters Patent issued in Our name by Our Governor-
General of the Commonwealth of Australia on 10 September 1980
We appointed you to be a Commissioner to inquire into and
report upon certain matters relating to the Federated Ship
Painters and Dockers Union and the officers and members of
that union:

AND WHEREAS by those Letters Patent We required you to
furnish to Our Governor-General of the Commonwealth of
Australia, not later than 30 September 1981 or such later date
as We may be pleased to fix, a report of the results of your
inquiry and your recommendations:

NOW THEREFORE We Do, by these Our Letters Patent issued
in Our name by Our Administrator of the Government of the
Commonwealth of Australia on the advice of the Federal Executive
Council, fix 31 December 1982 as the date on or before which

ENTERED ON RECORD by me, in the Register of Patents No. 16 , Page 26 .

This twenty fifth day of June 1981.

Secretary to the Federal Executive Council


Frederick M. M. M.

We require you to furnish to Our Governor-General of the Commonwealth of Australia a report of the results of your inquiry and your recommendations.

WITNESS His Excellency the Honourable Sir Stanley Charles Burbury, Knight Commander of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire, Knight of The Most Venerable Order of the Hospital of Saint John of Jerusalem, Administrator of the Government of the Commonwealth of Australia.

Dated this twenty fifth
day of June

1981.


Administrator

By His Excellency's Command,



Minister of State for Industrial
Relations for and on behalf of
the Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of
Australia and Her other Realms and Territories, Head
of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WHEREAS by Letters Patent issued in Our name by Our
Governor-General of the Commonwealth of Australia on
10 September 1980 We appointed you to be a Commissioner
to inquire into and report upon certain matters
relating to the Federated Ship Painters and Dockers
Union (hereinafter referred to as "the Union") and
the officers and members of that Union:

AND WHEREAS it is desirable that your inquiry
include certain matters that may not fall directly
within the matters to be inquired into under the
Letters Patent issued on 10 September 1980:

ENTERED ON RECORD by me, in Register of Patents No. 17, page 18,
this 1st day of April 1982

[Signature]
Secretary to the Federal Executive Council

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NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, vary the Letters Patent issued on 10 September 1980 so as to require that, to the extent that you are not required to do so by those Letters Patent, you inquire -

- (a) whether the Union or any officers or members of the Union have engaged in illegal activities, other than activities in relation to shipping or any naval establishment;
- (b) whether any person, group of persons or body established by, or associated with, the Union or its members is engaged in illegal activities; and
- (c) whether any person is using the Union or its members for the purposes of illegal activities:

AND WE DECLARE that, for the purposes of these Our Letters Patent, "illegal activities" means -

- (d) activities involving any breach of a law of the Commonwealth or a Territory;
- (e) activities in, or in relation to, trade and commerce between Australia and places outside Australia, among the States or between a State and a Territory, being activities which are contrary to a law of the Commonwealth, a State or a Territory; and

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(f) activities that have the effect of, or are directed to, impeding, preventing or defeating, or that tend to impede, prevent or defeat, the operation, implementation or enforcement of a law of the Commonwealth or a Territory:

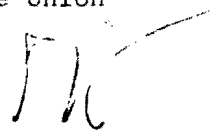
AND WE FURTHER DECLARE that, for the purposes of the Letters Patent issued on 10 September 1980, without limiting the meaning of the expression "illegal activity", that expression includes any activity that is an illegal activity for the purposes of these Letters Patent:

AND WE FURTHER DECLARE that, for the purposes of the Letters Patent issued on 10 September 1980 and of these Letters Patent -

- (g) a reference to officers or members of the Union includes a reference to persons purporting to be officers or members of the Union; and
- (h) a reference to illegal activities engaged in by officers or members of the Union is a reference to illegal activities engaged in by officers or members of the Union, whether by themselves or in association with any other person:

AND WE FURTHER DECLARE that the Letters Patent issued on 10 September 1980 shall have effect as if the words -

" AND We further direct that any finding that the Union or any officer or member of the Union

A handwritten signature or set of initials, possibly 'M' or 'N', with a long horizontal stroke extending to the right.

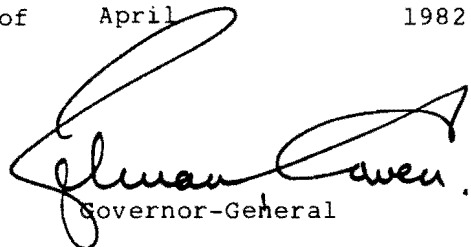
has engaged in conduct amounting to a criminal offence be made only on evidence, admissible in a Court of Law, sufficient to place the Union, officer or member on trial for that offence. "

be omitted and the following words substituted -

" AND WE FURTHER DIRECT that a finding that the Union or a person has engaged in conduct amounting to a criminal offence be made only on evidence, admissible in a Court of Law, sufficient to place the Union or that person, as the case may be, on trial for that offence. "

WITNESS His Excellency the Right Honourable Sir Zelman Cowen, a member of Her Majesty's Most Honourable Privy Council, Knight of The Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of The Royal Victorian Order, Knight of The Most Venerable Order of the Hospital of Saint John of Jerusalem, one of Her Majesty's Counsel learned in the law, Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force.

Dated this first day of April 1982.


Governor-General

By His Excellency's Command,


Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of
Australia and Her other Realms and Territories, Head
of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WHEREAS by Letters Patent issued in Our name by Our
Governor-General of the Commonwealth of Australia on
10 September 1980 and 1 April 1982 We appointed you to
be a Commissioner to inquire into and report upon
certain matters relating to the Federated Ship Painters
and Dockers Union and the officers and members of that
Union:

AND WHEREAS it is desirable that new provision be made
as to the time within which you are to furnish a report
of your inquiry and your recommendations:

NOW THEREFORE We do, by these Our Letters Patent issued
in Our name by Our Governor-General of the Commonwealth

ENTERED ON RECORD by me, in Register of Patents No. 17, page 50,
this 25th day of December 1982

Secretary to the Federal Executive Council

David M. M. M.

Ans

of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, declare that the Letters Patent issued on 10 September 1980 (as varied by the Letters Patent issued on 1 April 1982) shall have effect as if for sub-paragraph (f) of the concluding paragraph of the first-mentioned Letters Patent there were substituted the following sub-paragraph:

"(f) not later than -

(i) the expiration of the period of
6 months commencing on the day fixed
for the purpose of section 2 of the
National Crimes Commission Act 1982;

or

(ii) if the day so fixed is later than
1 July 1983 - 31 December 1983,
to furnish to Our Governor-General of the
Commonwealth of Australia a report of the
results of your inquiry and your
recommendations.".

WITNESS His Excellency the Right
Honourable Sir Ninian Martin Stephen,
a member of Her Majesty's Most
Honourable Privy Council, Knight of
the Order of Australia, Knight Grand
Cross of the Most Distinguished Order
of Saint Michael and Saint George,
Knight Grand Cross of the Royal
Victorian Order, Knight Commander of
The Most Excellent Order of the British



3.

Empire, Knight of the Most Venerable
Order of the Hospital of Saint John of
Jerusalem, Governor-General of the
Commonwealth of Australia and
Commander-in-Chief of the Defence Force.

Dated this twenty fifth
day of December 1982.

A handwritten signature in black ink, appearing to be 'G. L. Goff', written in a cursive style.

Governor-General

By His Excellency's Command

A handwritten signature in black ink, appearing to be 'J. L. Goff', written in a cursive style.

Minister of State for Trade
and Resources
for and on behalf of the
Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen
of Australia and Her other Realms and Territories,
Head of the Commonwealth:

TO:

FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WHEREAS by Letters Patent issued in Our name by Our
Governor-General of the Commonwealth of Australia on
10 September 1980 We appointed you to be a
Commissioner to inquire into and report upon certain
matters relating to the Federated Ship Painters and
Dockers Union and the officers and members of that
Union:

AND WHEREAS those Letters Patent were varied by
Letters Patent issued on 1 April 1982 and
25 December 1982:

AND WHEREAS it is desirable that those Letters Patent
be further varied:

ENTERED ON RECORD by me, in Register of Patents No. 18, page 13,
this 2nd day of February 1983.

Secretary to the Federal Executive Council

David McKinnon

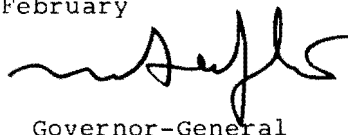
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NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, declare that the Letters Patent issued on 10 September 1980 (as varied by the Letters Patent issued on 1 April 1982 and 25 December 1982) shall have effect as if, after sub-paragraph (f) of the concluding paragraph of those Letters Patent, there were added the following paragraph:

"AND We further declare that the Commission established by these Our Letters Patent is a relevant Commission for the purposes of sections 4 and 5 of the Royal Commissions Act 1902."

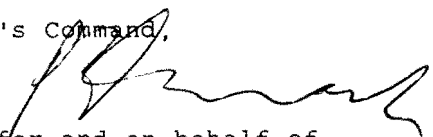
WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire, Knight of the Most Venerable Order of the Hospital of Saint John of Jerusalem, Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force.

Dated this second
day of February 1983.



Governor-General

By His Excellency's Command,



Attorney-General for and on behalf of
the Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B

GREETING:

WHEREAS by Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on 10 September 1980 We appointed you to be a Commissioner to inquire into and report upon certain matters relating to the Federated Ship Painters and Dockers Union and the officers and members of that Union :

AND WHEREAS those Letters Patent were varied by Letters Patent issued on 25 June 1981, 1 April 1982, 25 December 1982 and 2 February 1983 :

AND WHEREAS it is desirable that further time be allowed for the completion of your inquiry and the submission of your report :

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Consitution of the Commonwealth o:

A handwritten signature, likely of the Governor-General, in dark ink.

ENTERED ON RECORD by me, in Register of Patents No. 18, page 193,
this 21st day of December 1983.

Secretary to the Federal Executive Council

A handwritten signature, likely of the Secretary to the Federal Executive Council, in dark ink.

2.

Australia, the Royal Commissions Act 1902 and other enabling powers, vary the Letters Patent issued on 10 September 1980, as affected by the Letters Patent issued on 25 June 1981, 1 April 1982, 25 December 1982 and 2 February 1983, so as to require that your report of the results of your inquiry and your recommendations be furnished to Our Governor-General of the Commonwealth of Australia not later than 30 June 1984.

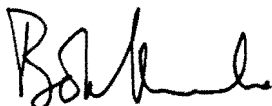
WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of The Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire, Knight of the Most Venerable Order of the Hospital of Saint John of Jerusalem, Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force.

Dated this twenty first day of December 1983.



Governor-General

By His Excellency's Command,



Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B

GREETING:

WHEREAS by Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on 10 September 1980 We appointed you to be a Commissioner to inquire into and report upon certain matters relating to the Federated Ship Painters and Dockers Union and the officers and members of that Union:

AND WHEREAS those Letters Patent were varied by Letters Patent on 25 June 1981, 1 April 1982, 25 December 1982, 2 February 1983, and 15 December 1983:

AND WHEREAS it is desirable that further time be allowed for the completion of your inquiry and the submission of your report:

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the

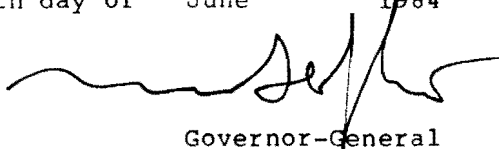
ENTERED ON RECORD by me, in Register of Patents No. 19, page 26, this 27th day of June 1984.

Acting Secretary to the Federal Executive Council

Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, vary the Letters Patent issued on 10 September 1980, as affected by the Letters Patent issued on 25 June 1981, 1 April 1982, 25 December 1982, 2 February 1983 and 15 December 1983, so as to require that your report of the results of your inquiry and your recommendations be furnished to Our Governor-General of the Commonwealth of Australia not later than 30 September 1984.

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order, Knight Commander of The Most Excellent Order of the British Empire, Knight of the Most Venerable Order of the Hospital of Saint John of Jerusalem, Governor-General of the Commonwealth of Australia and Commander-in-Chief of the Defence Force.

Date this twenty seventh day of June 1984



Governor-General

By His Excellency's Command,



Prime Minister



COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God Queen of
Australia and Her other Realms and Territories,
Head of the Commonwealth:

TO

FRANCIS XAVIER COSTIGAN, Q.C., LL.B.

GREETING:

WHEREAS by Letters Patent issued in Our name by Our
Governor-General of the Commonwealth of Australia
on 10 September 1980 We appointed you to be a
Commissioner to inquire into and report upon
certain matters relating to the Federated Ship
Painters and Dockers Union and the officers and
members of that Union:

AND WHEREAS those Letters Patent were varied by
Letters Patent on 25 June 1981, 1 April 1982, 25
December 1982, 2 February 1983, 15 December 1983
and 27 June 1984:

AND WHEREAS it is desirable that further time be
allowed for the completion of your inquiry and the
submission of your report:

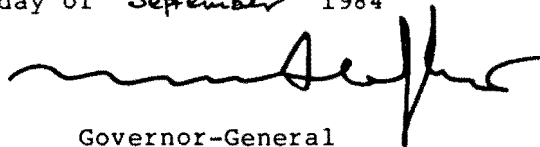
ENTERED ON RECORD by me, in Register of Patents No. 19, page 40,
this 20th day of September, 1984

Secretary to the Federal Executive Council

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, vary the Letters Patent issued on 10 September 1980, as affected by the Letters Patent issued on 25 June 1981, 1 April 1982, 25 December 1982, 2 February 1983, 15 December 1983 and 27 June 1984 so as to require that your report of the results of your inquiry and your recommendations be furnished to Our Governor-General of the Commonwealth of Australia not later than 31 October 1984.

WITNESS His Excellency the Right Honourable Sir Ninian Martin Stephen, a member of Her Majesty's Most Honourable Privy Council, Knight of the Order of Australia, Knight Grand Cross of The Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order, Knight Commander of the Most Excellent Order of the British Empire, Governor-General of the Commonwealth of Australia.

Dated this *twentieth* day of *September* 1984



Governor-General

By His Excellency's Command,



Prime Minister

CONSOLIDATED TERMS OF REFERENCE
(other than variations to reporting dates)

COMMONWEALTH OF AUSTRALIA

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia
and Her other Realms and Territories, Head of the
Commonwealth:

TO FRANCIS XAVIER COSTIGAN, Q.C., LL.B

GREETING:

WE DO by these Our Letters Patent issued in Our name
by Our Governor-General of the Commonwealth of
Australia on the advice of the Federal Executive
Council and in pursuance of the Constitution of the
Commonwealth of Australia, the Royal Commissions Act
1902 and other enabling powers, appoint you to be,
on and from 1 October 1980, a Commissioner to
inquire, for the purpose of the exercise and
performance of the powers and functions of the
Parliament and Government of the Commonwealth,
whether the Federated Ship Painters and Dockers
Union (hereinafter referred to as "the Union") or
any officer or member of the Union has engaged in
illegal activities in relation to Shipping engaged
in trade and commerce between Australia and places
outside Australia or among the States or ships
operated by, or on behalf of, the Commonwealth or in
relation to any naval establishment within the
meaning of the Naval Defence Act 1910:

AND, without restricting the scope of your inquiry, We direct you, for the purposes of your inquiry, to give particular attention to the following questions:

10.9.80 (a) whether any executive, administrative or other body forming part of, or established by, the Union has been used, or is being used, for the purposes of illegal activities, other than activities involving only breaches of laws, whether of the Commonwealth or a State, relating to trade unions;

10.9.80 (b) whether the Union or any of its officials or members has been or is engaged in demanding or receiving payments (other than payments of an ordinary commercial nature or payments in accordance with an industrial award or agreement in respect of work actually performed or to be performed) from employers or other persons in relation to ships engaged in trade and commerce between Australia and places outside Australia or among the States, in relation to ships operated by, or on behalf of, the Commonwealth or in relation to any naval establishment within the meaning of the Naval Defence Act 1910 and, if any such payments have been made -

(i) the persons by whom and to whom any such payments have been made;

(ii) the reasons for, or the purpose of, any such payments;

(iii) the subsequent or proposed use or disposal of any such payments;

10.9.80 (c) whether the Union or any officers or members of the Union have engaged in illegal activities in relation to the election or appointment of officers of the Union or the conduct or purported conduct of the Union's affairs;

10.9.80 (d) if the Union or any officers or members of the Union have engaged in activities of any of the kinds referred to in this or the preceding paragraphs, whether the employment conditions applying to the work of ship painters and dockers have contributed to the development of those activities;

Varied NOW THEREFORE We do, by these Our Letter Patent
1.4.82 issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and in pursuance of the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, vary the Letters Patent issued on 10 September 1980 so as to require that, to the extent that you are not required to do so by those Letters Patent, you inquire -

1.4.82 (a) whether the Union or any officers or members of the Union have engaged in illegal activities, other than activities in relation to shipping or any naval establishment;

- 1.4.82 (b) whether any person, group of persons or body established by, or associated with, the Union or its members is engaged in illegal activities; and
- 1.4.82 (c) whether any person is using the Union or its members for the purposes of illegal activities:
AND WE DECLARE that, for the purposes of these Our Letters Patent, "illegal activities" means -
- 1.4.82 (d) activities involving any breach of a law of the Commonwealth or a Territory;
- 1.4.82 (e) activities in, or in relation to, trade and commerce between Australia and places outside Australia, among the States or between a State and a Territory, being activities which are contrary to a law of the Commonwealth, a State or a Territory; and
- 1.4.82 (f) activities that have the effect of, or are directed to, impeding, preventing or defeating, or that tend to impede, prevent or defeat, the operation, implementation or enforcement of a law of the Commonwealth or a Territory:
- 1.4.82 AND WE FURTHER DECLARE that, for the purposes of the Letters Patent issued on 10 September 1980, without limiting the meaning of the expression "illegal activity", that expression includes any activity that is an illegal activity for the purposes of these Letters Patent:

AND WE FURTHER DECLARE that, for the purposes of the Letters Patent issued on 10 September 1980 and of these Letters Patent -

1.4.82 (g) a reference to officers or members of the Union includes a reference to persons purporting to be officers or members of the Union; and

1.4.82 (h) a reference to illegal activities engaged in by officers or members of the Union is a reference to illegal activities engaged in by officers or members of the Union, whether by themselves or in association with any other person:

10.9.80 AND We direct you to make such recommendations arising out of your inquiry as you think appropriate, including recommendations regarding the legislative or administrative changes, if any, that are necessary or desirable:

10.9.80 AND We further direct that [any] a finding that
Varied the Union or [any officer or member of the Union] a
1.4.82 person has engaged in conduct amounting to a criminal offence be made only on evidence, admissible in a Court of Law, sufficient to place the Union [, officer or member] or that person, as the case may be, on trial for that offence.

10.9.80 AND We further direct that, in making your recommendations, you have regard to the announced intention of the Government of the Commonwealth to introduce a system of reporting of demands for, and

payments of, monies following the report of the Royal Commission into Alleged Payments to Maritime Unions by the Honourable Mr Justice Sweeney:

10.9.80 AND We declare that you are authorized to conduct your inquiry into any matters under these Our Letters Patent in combination with any inquiry into the same or related matters that you are directed or authorized to make by any Commission issued, or in pursuance of any order or appointment made, by any of Our Governors of the States:

AND We require you as expeditiously as possible to make your inquiry and -

(e) not later than 31 March 1981, to furnish to Our Governor-General of the Commonwealth of Australia an interim report of the results of your inquiry; and

Varied (f) not later than 30 September 1981, or such
25.6.81 later date as We may be pleased to fix, to
25.12.82 furnish to Our Governor-General of the
21.12.83 Commonwealth of Australia a report of the
27.6.84 results of your inquiry and your
20.9.84 recommendations.

Varied AND We further declare that the Commission
2.2.83 established by these Our Letters Patent is a relevant Commission for the purpose of sections 4 and 5 of the Royal Commissions Act 1902.



ELIZABETH THE SECOND BY THE GRACE OF GOD QUEEN
OF AUSTRALIA AND HER OTHER REALMS AND
TERRITORIES QUEEN, HEAD OF THE COMMONWEALTH.

To Our trusty and well-beloved
FRANCIS XAVIER COSTIGAN, Q.C.,

GREETINGS:

WHEREAS the Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia, the Royal Commissions Act 1902 and other enabling powers, has appointed you FRANCIS XAVIER COSTIGAN, Q.C., to be a Commissioner to inquire into, and report upon certain matters relating to the Federated Ship Painters and Dockers Union and its officers and members

AND WHEREAS the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, hath deemed it expedient that a Commission should forthwith issue to you in the terms set out below

NOW KNOW YE that We, reposing great trust and confidence in your knowledge and ability, have constituted and appointed and by these presents do constitute and appoint you FRANCIS XAVIER COSTIGAN, Q.C., to be Our Commissioner to inquire whether the Federated Ship Painters and Dockers Union (hereinafter referred to as "the Union") or any officer or member of the Union in the course of or in relation to the affairs of the Union, has engaged in any illegal activities (other than activities involving only breaches of the law whether of the Commonwealth or a State relating to trade unions)

AND, without restricting the scope of your inquiry, we direct you, for the purposes of your inquiry, to give particular attention to the following questions:

- (a) whether any executive, administrative or other body forming part of, or established by, the Union has been used, or is being used, for the purposes of illegal activities, other than activities involving only breaches of laws, whether of the Commonwealth or a State, relating to trade unions;
- (b) whether the Union or any of its officials or members has been or is engaged in demanding or receiving payment (other than payments of an ordinary commercial nature or payments in accordance with an industrial award or agreement in respect of work actually performed or to be performed) from employers or other persons and, if any such payments have been made -
 - (i) the persons by whom and to whom any such payments have been made;
 - (ii) the reasons for, or the purpose of, any such payments;
 - (iii) the subsequent or proposed use or disposal of any such payments;
- (c) whether the Union or any officers or members of the Union have engaged in illegal activities in relation to the election or appointment of officers of the Union or the conduct or purported conduct of the Union's affairs;
- (d) if the Union or any officers or members of the Union have engaged in activities of any of the kinds referred to in this or the preceding paragraph, whether the employment conditions applying to the work of ship painters and dockers have contributed to the development of those activities;

AND WE direct you to make such recommendations arising out of your inquiry as you think appropriate, including recommendations regarding the legislative or administrative changes, if any, that are necessary or desirable:



AND WE further direct that any finding that the Union or any officer or member of the Union has engaged in conduct amounting to a criminal offence be made only on evidence, admissible in a Court of Law, sufficient to place the Union, officer or member on trial for that offence:

AND WE further direct that, in making your recommendations, you have regard to the announced intention of the Government of the Commonwealth to introduce a system of reporting of demands for, and payments of, monies following the report of the Royal Commission into Alleged Payments to Maritime Unions by the Honourable Mr. Justice Sweeney:

AND WE do by these presents give and grant unto you full power and authority to call before you such person or persons as you shall judge likely to afford you any information upon the subject of this Our Commission, and to inquire of and concerning the premises by all other lawful ways and means whatsoever:

AND WE declare that you are authorized to conduct your inquiry into the matters mentioned aforesaid under these our Letters Patent in combination with any inquiry into the matters that you are directed or authorized to make by any Commission or Commissions issued, or in pursuance of any Order or appointment made, by the Governor-General of the Commonwealth of Australia or the Governor of any State of the Commonwealth of Australia.

AND WE will and command that this Our Commission shall continue in full force and virtue and that you shall and may from time to time and at any place or places proceed in the execution thereof, and of every matter and thing therein contained although the same be not continued from time to time by adjournment:

AND WE require you as expeditiously as possible to make your inquiry and -

- (a) not later than six months from the date hereof to furnish to Us under your hand an interim report of the results of your inquiry; and
- (b) not later than twelve months from the date hereof or such later date as We may be pleased to fix, to report to Us under your hand and seal a report of the results of your inquiry and your recommendations.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the seal of our said State to be hereunto affixed.



Henry Winneke

By His Excellency's Command,

[Signature]
ATTORNEY-GENERAL

WITNESS, His Excellency the Honourable Sir Henry Winneke, Knight Commander of the Most Distinguished Order of St. Michael and Saint George, Knight Commander of the Royal Victorian Order, Officer of the Most Excellent Order of the British Empire, Knight of the Most Venerable Order of the St. John of Jerusalem, One of Her Majesty's Counsel Learned in the Law, Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, etc., etc., etc., at Melbourne this first day of October One thousand nine hundred and eighty in the twenty-ninth year of Our reign.

Entered on record by me in the Register of Patents Book No. 36 Page 366 on the 1st day of October One thousand nine hundred and eighty.

[Signature]
SECRETARY



ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN OF
AUSTRALIA AND HER OTHER REALMS AND TERRITORIES, HEAD
OF THE COMMONWEALTH.

To our Trusty and Well-beloved

FRANCIS XAVIER COSTIGAN, Q.C.

GREETINGS:

WHEREAS the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, issued to you on the 1st day of October 1980 a Commission to inquire into and report upon certain matters relating to the Federated Ships Painters and Dockers Union or any officer or member of the Union and you were directed expeditiously as possible and not later than twelve months from the 1st day of October, 1980, to report under your hand and seal a report of the results of your inquiry and your recommendations.

AND WHEREAS it is considered expedient to extend the latest date upon which you shall report as aforesaid.

NOW KNOW YE that We hereby extend the latest date upon which you shall report as aforesaid to not later than the 31st day of December, 1982.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Seal of Our State to be hereunto affixed.



Henry Winneke

By His Excellency's Command.

[Signature]
ATTORNEY-GENERAL.

WITNESS, His Excellency the Honourable Sir Henry
Winneke, Knight Commander of the Most Distinguished Order
of Saint Michael and Saint George, Knight Commander of
the Royal Victorian Order, Officer of the Most Excellent
Order of the British Empire, Knight of the Most Venerable
Order of the Saint John of Jerusalem, One of Her
Majesty's Counsel Learned in the Law, Governor of the
State of Victoria and its Dependencies in the
Commonwealth of Australia, etc. etc. etc. at Melbourne
this thirtieth day of June One thousand nine hundred
and eighty-one in the thirtieth year of Our Reign.

ENTERED on record by me in the Register of
Patents Book No. 37 Page 9 on the
thirtieth day of June One
Thousand Nine Hundred and Eighty-One.

[Signature]
SECRETARY.



ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN
OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH.

To our Trusty and Well-beloved

FRANCIS XAVIER COSTIGAN, Esquire, Q.C.

GREETINGS:

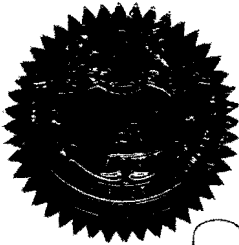
WHEREAS the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, issued to you on the ninth day of September, 1980 a Commission to inquire into and report upon certain matters relating to the Federated Ship Painters and Dockers Union or any officer or member of the Union and you were required as expeditiously as possible and not later than twelve months from the 1st day of October, 1980 or such later date as we may be pleased to fix to report under your hand and seal a report of the results of your inquiry and your recommendations.

AND WHEREAS a Commission issued to you on 30 June, 1981 fixed the latest date upon which you shall report under your hand and seal as aforesaid at the 31st day of December, 1982.

AND WHEREAS it is considered expedient to fix a later date upon which you shall report under your hand and seal as aforesaid.

NOW KNOW YOU that We hereby fix the 31st day of December, 1983 as the latest date upon which you shall report under your hand and seal as aforesaid.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Seal of Our State to be hereunto affixed.



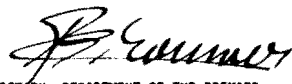


By His Excellency's Command.


ATTORNEY-GENERAL

WITNESS, His Excellency Sir Brian Stewart Murray, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Officer of the Order of Australia, Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, etc. etc. etc. at Melbourne this **NINETEENTH** day of **OCTOBER** One thousand nine hundred and eighty-two and in the thirty-first year of Our Reign.

ENTERED on Record by me in the Register of Patents Book No. 37
Page 142 on the 19 day of October One Thousand,
Nine Hundred and Eighty-two.


SECRETARY, DEPARTMENT OF THE PREMIER
AND CABINET



ELIZABETH THE SECOND, BY THE GRACE OF GOD QUEEN
OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH.

To our Trusty and Well-beloved

FRANCIS XAVIER COSTIGAN, Esquire, Q.C.

GREETINGS:

WHEREAS the Governor of the State of Victoria, in the Commonwealth of Australia, by and with the advice of the Executive Council of the said State, issued to you on the 9th day of September 1980 a Commission to inquire into and report upon certain matters relating to the Federated Ship Painters and Dockers Union or any officer or member of the Union and you were required as expeditiously as possible and not later than twelve months from the 1st day of October 1980 or such later date as we may be pleased to fix to report under your hand and seal a report of the results of your inquiry and your recommendations.

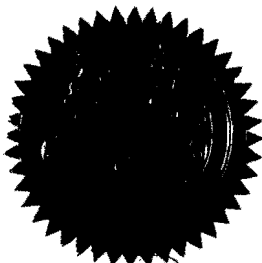
AND WHEREAS a Commission issued to you on the 30th day of June 1981 fixed the latest date upon which you shall report under your hand and seal as aforesaid as the 31st day of December 1982.

AND WHEREAS an Order dated 6th October 1982 fixed the latest date upon which you shall report under your hand and seal as aforesaid as the 31st day of December 1983.

AND WHEREAS it is considered expedient to fix a later date upon which you shall report under your hand and seal as aforesaid.

NOW KNOW YOU that We hereby fix the 31st day of December 1984 as the latest date upon which you shall report under your hand and seal as aforesaid.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Seal of Our State to be hereunto affixed.



By His Excellency's Command.

J. H. K.

ATTORNEY-GENERAL

WITNESS, His Excellency Rear Admiral Sir Brian Stewart Murray, Knight
Commander of Our Most Distinguished Order of Saint Michael
and Saint George, Officer of the Order of Australia, Knight
of the Most Venerable Order of Saint John of Jerusalem,
Governor of the State of Victoria and its Dependencies in the
Commonwealth of Australia, etc. etc. etc. at Melbourne this
20th day of December one thousand nine hundred and
eighty-three and in the thirty-second year of Our Reign.

ENTERED on Record by me in the Register of Patents, Book No. 37
Page 238 this 20th day of December One Thousand,
Nine Hundred and Eighty-three.

G. E. BROUWER

SECRETARY, DEPARTMENT OF THE PREMIER AND CABINET

ROYAL COMMISSION ON THE ACTIVITIES
OF THE FEDERATED SHIP PAINTERS & DOCKERS UNION

FINAL REPORT

VOLUME 1

NOTE

Certain names of individuals and companies have been deleted from this published Volume upon the advice of the Commonwealth and Victorian Directors of Public Prosecutions. These deletions have been made to avoid prejudice to pending and current prosecutions. As a result, blank spaces appear in parts of the Volume.

VOLUME 1

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CHAPTER 1 - INTRODUCTION

1.001 This is the Sixth and Final Report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers' Union.

1.002 My Inquiry commenced on 1 October 1980. It was commissioned by both the Commonwealth and Victorian Governments. Letters Patent were issued to me to conduct this Inquiry in September 1980 by both the Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and by the Governor of the State of Victoria on the advice of the Executive Council of that State. Constitutional requirements resulted in some differences in the text of both Commissions but they were in substance directed to an Inquiry into the illegal activities of the Ship Painters and Dockers' Union. Although no change occurred in the Terms of Reference contained in the Victorian Letters Patent, the Commonwealth Letters Patent were significantly changed. The terms of both Commissions were extended on a number of occasions with a final extension to 31 October 1984.

1.003 As this is my Final Report I shall set out briefly the history of the Commission and trace the development of its investigations.

1.004 The Commission commenced its hearings in the first week of October 1980. In the first few weeks its main task was to travel around Australia to each capital city and obtain from the Union all of its records. This exercise produced a massive number of documents. It became apparent in the first week of the Commission that the documents which would be acquired would be so large in number that no manual

filing system could sensibly cope with them, and they would be impossible to analyse without the use of modern management systems. Accordingly, immediate steps were taken to make use of computer facilities under the control of the Department of Administrative Services. In addition, it became clear that special computer programmes would need to be written to enable the material to be accessed and manipulated in a way which would assist in the answering of the questions which flowed from the Terms of Reference. This was put in hand and computer consultants were engaged. They have continued to be engaged by the Commission since that time. Senior Counsel assisting me, Mr Douglas Meagher, Q.C., provided detailed specifications to the consultants setting out the precise needs of the Commission. The development of the programmes continued throughout the life of the Commission and enhancements to the system occurred almost on a weekly basis.

1.005 The first four months of the Commission were devoted exclusively to an examination of the Union, its membership, criminal background and practices, and its activities at the Williamstown Naval Dockyard. In March 1981, as I was required to under my Letters Patent, I delivered Interim Report No. 1. This was a confidential report. For the reasons set out in it, I sought an extension of my Commission until the end of 1982. That request was granted. In the course of the Report I said, "It is clear that the task imposed on me is far more formidable (and probably far more significant) than was initially realized." - paragraph 1.13. Nothing which has occurred since March 1981 has caused me to alter that view.

1.006 The work of the Commission continued and its investigations expanded. Indeed, in July 1981 I delivered a second Interim Report to Government. This report likewise was confidential. I made some comments which reflected my state of thinking at that time and it is useful, I believe, to refer to them again.

"1.12 The Commission has concentrated on Victoria. The criminal organisations found there have their operations outside that State and it may be that there are no others operating interstate. Or it may not. If there are similar criminal organisations at work in other States then the work of this Commission will take a very long time. It will become akin to a Crime Commission and less a Royal Commission investigating one particular Union.

1.13 This should not come as a surprise. This Union has a positive policy of recruiting hardened criminals, at least in Victoria. Such people normally are unattractive to honest people, including the many honest and hard working trade unionists in this country. But to this Union such criminals are desirable. It is probably in order to make use of their dubious 'talents'. It certainly has as the consequence that any dishonest person requiring criminals to carry out his project has a 'central employment agency' at which he can recruit them. If one adds the facility offered by the Union to equip a criminal 'on the run' with a false identity and to find him work interstate whilst the 'heat' is on, one finds a sophisticated organisation posing as a Union but having as a major purpose an enterprise of a most evil kind.

1.14 In order to concentrate on the more significant, the Commission has shortened the examination of lesser matters and has taken steps to place the completion of the investigation and prosecution of those matters in the hands of the appropriate police authorities. For example, the unemployment fraud described later in this report will not be the subject of further extensive examination by the Commission. It will make its data base available to the Australian Federal Police for its use in the detection of the fraud, and will stand aside to allow that Force to get on with the job of its prosecution. The most that the Commission will do in the future is to ensure the public revelation of the extent of the fraud in

anticipation that this will make it more difficult to be perpetrated in the future. Likewise at the Williamstown Naval Dockyard where the Naval Police discovered a number of forged medical certificates and Management consequently dismissed a number of painters and dockers, the Commission will refrain from making further enquiry other than of the briefest kind. So too will the Commission 'hand down' other areas of detected crime once they have been explored to a point that will enable the traditional forms of police investigation to be undertaken."

(Interim Report No. 2, p. 8-9)

1.007 By the end of 1981 the investigations had developed pace. Their extent was consistent with the views I expressed in both my earlier reports but had, in fact, moved into the area of income tax evasion in a way not anticipated in mid-1981. So serious was the situation that on 18 December 1981 I delivered Interim Report No. 3. This was a public document.

1.008 When I delivered the 1983 Sir John Barry Memorial Lecture I recounted the circumstances in which my attention was first directed to this area. It is appropriate to repeat what I then said.

"It was in the early months of the Commission that the extent of the task became apparent. Perhaps the first moment of real light occurred one morning at the Fitzroy Court. A witness was giving evidence in relation to the activities of a company said to be engaged in ship repairing. Subsequent investigations showed that not one dollar had ever been earned in that activity; nonetheless it was full of interest, involving classic racketeering and on any view right in the centre of my Terms of Reference. The witness had some documents, he said; not in court but back at the office. Would he mind, I politely asked him, if I adjourned for a

short time while he returned to his office to collect them and bring them back to the court. I offered him the assistance of one of my solicitors and a Federal Policeman. He could hardly decline such an offer. The documents were provided just before lunch. I should tell you that prior to that morning I had not seen signs of money exceeding five thousand dollars or thereabouts. Imagine my surprise to find in the files a cheque for one million, five hundred thousand dollars. Two or three minutes later I found an application by an associated company to the Reserve Bank to bring into this country from Lebanon, four million, five hundred thousand dollars. It didn't really seem to fit in with ship repairing. I decided to look more carefully at this associated company. It had a bank account in a distant suburb in another State. The bank vouchers were subpoenaed. I found that in three months some two hundred and fifty million dollars passed through that account. It was one of dozens of such accounts around Australia."

1.009 The prime purpose of Interim Report No. 3 was to alert Government to the seriousness of the situation and to request an amendment to Section 16 of the Income Tax Assessment Act allowing me access to records held by the Taxation Office. This recommendation was accepted and amendments were passed to Section 16, though not in precisely the terms suggested.

1.010 I made use of the access immediately it was granted. As a result I delivered a Fourth Interim Report on 27 July 1982. It was in three volumes, but only Volume 1 was made public. This was in accord with my recommendation. Volume 1 dealt with a number of matters of which by far the most significant was Chapter 3 entitled "Fraud on the Commonwealth Revenue". This chapter produced a good deal of public discussion, as well it might, because it confirmed what was already outlined in the McCabe-LaFranchi Report and disclosed a scandalous fraud.

An intriguing feature was the use of painters and dockers. In Volume 2, which remains confidential, I dealt with various areas of organised crime and in Chapter 10 I dealt with the strategies needed to deal with this problem. Chapter 10, suitably edited, was subsequently made public. In Volume 1 (paragraphs 3.133 and 3.134) I recommended the establishment of a Task Force of lawyers (both Counsel and solicitors), Taxation investigators and Corporate Affairs investigators and others. The Government accepted the thrust of the recommendation and chose to realise it by the establishment of Special Prosecutors. Two were appointed: Mr Roger Gyles, Q.C. to deal with the bottom of the harbour problems, and Mr Robert Redlich, a member of the Victorian Bar, to deal with other criminal matters arising out of the confidential report. Both these appointments were an appropriate response to my recommendation.

1.011 For the balance of 1982 and the first half of 1983 I concentrated the resources of the Commission on the investigation of a major fraud based in Brisbane but with implications throughout Australia and extending into Singapore and Hong Kong. I reported on this matter in Interim Report No. 5 which I delivered on 25 July 1983. By the time of its delivery the major conspirators had been charged with criminal offences and for this reason two substantial volumes were not made public.

1.012 In April 1983 I conferred with the newly elected Prime Minister, the Honourable R.J. Hawke, AC, MP, and briefed him as to the general nature of the investigations. It was his desire that I should direct the remaining months of my Commission into drug trafficking and the involvement of the members of the Union in that enterprise. When I had completed the investigation which formed the substance of Interim Report No. 5, I concentrated my attention on that area. That investigation has a long way to go and should be taken up and completed by the National Crime Authority.

1.013 This report is properly described as a final report. It is "final" in the sense that it is the last report I shall submit. My interim reports contained "final" conclusions on the matters addressed by them. In preparing this report, I read again the interim reports. There is nothing in them which I wish to vary. Investigations since their delivery have confirmed the views expressed in them. As part of this "final" report I incorporate the interim reports, and they should be considered part of my "final" conclusions on the matters investigated over the entire life of my Commission.

1.014 For this reason, it is unnecessary to retrace matters set out in those earlier reports. In the fourth and fifth reports, for example, I defined the operations of criminal organisations. I did so for a purpose. It was to support a recommendation for the establishment of a crime authority, and for an upgrading of law enforcement resources. Since those reports I have seen a great deal more evidence of criminal organisations at work. Some are examined in parts of this report, though in the main they are the confidential volumes. The situation is as I explained in those earlier reports, and remains as demanding of remedial action as I then recommended. Some remedial action has been taken. A Crime Authority has been established; there is a greater awareness of the need for additional law enforcement resources, and steps to provide it are in train. No useful purpose is served by further definition of the problem. A description of the several criminal organisations may tittillate the public imagination, but it would serve no other purpose if done for that alone.

1.015 When the time came to prepare this report, I gave consideration to its purpose. It is desirable I explain my conclusion. My staff were attending to a number of matters, each being at a different stage of development.

Had the termination of my Commission meant the cessation of those investigations, it would have been necessary to report upon each so that it could be continued (to the extent possible) by ordinary law enforcement agencies. Such a task would have been formidable and would have taken a great deal of time. With the creation of the National Crime Authority, and its decision to investigate all matters referred by my Commission, a comprehensive report was no longer necessary. The task of identification of the matters was completed in July 1984 when they were defined and forwarded to the National Crime Authority. Since such action would have been my recommendation in a final report, their disposal some three and one half months before the end relieved me of that task.

1.016 The result is that the purposes to be served by this final report are restricted to relatively few. In the case of some matters, the investigations have reached a point where I am able to draw conclusions and make recommendations beyond merely referring the matters to the National Crime Authority. As I had been deeply involved in those matters, and as it would necessarily be many months before the Members of the National Crime Authority could attain the same degree of understanding, it is incumbent upon me to report on those matters. They touch upon areas in which I believe there is need for changes of laws, or administrative action of a kind beyond that which is normal. This report is limited to such matters, at least so far as investigations are concerned.

1.017 There is a further purpose of lesser moment. Any person commissioned to discharge a public duty is obliged, at the end, to give an account. In some cases this may be satisfied by little more than a report on the administration. In my case, however, there has been much public interest in the work I have been doing, and the manner in which it has been done. This added a further

requirement. It is necessary to record how the work was done in my Commission so that all may know and may discuss its ramifications.

1.018 With these two purposes in mind, this report has been prepared and is submitted. Although the principles applicable to what should or should not be included are simply stated, it has not been an easy task to distinguish between those investigations ready for report and those not.

1.019 There are a number of investigations omitted from this report which, to many, may seem a curious omission. One example is that which commenced with the murder of Ian Revell Carroll at a Mount Martha house on 3 January 1983. Inspection of the house where his body was found revealed a cache of weapons greater than ever found before in Victoria. It included high powered rifles, machine guns, police radio scanners, balaclavas, bank bags, security officers' uniforms, a surveillance van, safes, telephone codes, cash and documentation - the paraphernalia of "professional" robbers. Carroll had been a member of the Federated Ships Painters and Dockers Union; indeed he served on its executive and at one time claimed to be branch secretary. The man suspected of his murder is recorded as a member of the Queensland branch of the Union. Following his death, whilst the police searched for his murderer, my staff commenced an investigation of his financial affairs and those of his associates. It revealed a group of violent criminals operating along the eastern seaboard and engaged in all manner of crimes. They range from taxation fraud, insolvency fraud, robberies, drug importation and distribution, to violence and murder. From an analysis of some 1,500 pages a draft of 284 pages was prepared for this report. I gave attention to whether it would fulfil any proper purpose to deliver it to Government. Each chapter within the volume contained recommendations as to remedial action; yet on close analysis all recommendations were for

further and continuous investigation. In my view, it was properly the task of the National Crime Authority to pursue or supervise the pursuit of those matters. That end would be achieved by delivery of the draft volume directly to the Authority, and this I have done. There are a number of other investigations where my decision has been to follow a similar course, though in their case no draft was prepared for the report.

1.020 My report is in excess of 2,000 pages. It is divided into eleven volumes and a number of appendices. I recommend that six volumes (6-11) be not published. In many ways, it is regrettable such a recommendation is made. They deal with a number of matters which have been the subject of public debate; some contain the factual background supporting recommendations for changes of laws. In both cases, there is an interest in publication. However, there is an even stronger competing interest. Some matters in those volumes relate to current investigations of great importance which, if publication occurred, would be gravely prejudiced. Others deal with people now charged with serious criminal offences. This is the more frequent reason for non-publication.

1.021 At the time of delivery of the fourth interim report, I formed the view that it was undesirable that the law enforcement process should await a formal report to Government. That is why I requested support of the kind later given by the Special Prosecutors. The result was that as my investigations proceeded many prosecutions were initiated. This was much in the public interest. However it has had the consequence, such is the time taken for prosecutions to proceed through the Courts, that at the time of submitting this report those prosecutions are still in progress. Even though my reports are written not for the purpose of publicly demonstrating the criminality of the accused but rather to achieve legislative or administrative

change, there is little that can be done to disguise those involved so that they would not be recognised on publication. Thus the publication of the parts of this report dealing with those people would interfere with the judicial process. I have some doubts whether juries would be so influenced as to render the trials unfair; but my reservations are of little account when there exists the strong expressions of opinion by members of the High Court in Hammond -v- Commonwealth (1982) 42 ALR 327, and in other recent decisions such as News Ltd -v- NCSC (1984) 52 ALR 417. These decisions compel the recommendation I make that certain of the volumes be not published, at least until the criminal proceedings have come to an end. That will be, I fear, some years hence.

1.022 I will summarise the structure of the Report. Volume 1 contains an overview of the operations of the Commission over its life. I also address such matters as natural justice and the transfer to the National Crime Authority. Volume 2 sets out the investigatory techniques employed by the Commission. The manner in which the Commission has done its work is a matter of legitimate public debate and such debate will be uninformed unless those techniques are explained. Volume 3 is concerned with the Union. Volume 4 deals with SP bookmaking. Volume 5 deals with an aspect of the drug trade.

1.023 It is my recommendation that these five volumes be made public.

1.024 In relation to Volumes 6 to 11, it is my recommendation they remain confidential. The reasons vary with each volume. In some cases it is because persons are on trial. In other cases it is because the volume deals with highly sensitive, current investigations which could be impeded, if not destroyed, by disclosure. Volume 6 deals with Donald Lockyer and his associate David McCarthy. To

publish this problem may prejudice the trial of current charges laid against Lockyer. Volume 7 deals with a highly sensitive current drug investigation. It should under no circumstances be published as it would gravely prejudice that investigation. Volume 8 deals with the activities of several Melbourne men who are committed for trial. Volumes 9, 10 and 11 are very substantial. They deal, in fact, with some of the activities of Ian Beames, Brian Ray, Phillip Carver and a number of their associates all of whom have been charged with and several of whom are committed for trial on serious criminal charges. I am compelled to recommend that they not be published. In addition the further investigation of some of the matters would be prejudiced by publication though this is not so in respect of all of the matters. Ultimately, when all investigations are completed and all charges disposed, the public interest may require their publication. These volumes, as it happens, include reports on investigations into the matters disclosed by Mr Packer in his statement of 28 September 1984. My personal preference was to answer his allegations publicly, but I could do so only by the fullest account of each matter. I am prohibited from publishing such an account for the reasons I have given. There are considerations affecting people other than merely Mr. Packer which produce that result.

1.025 It is therefore my strong recommendation that Volumes 1 to 5 of this Report be published, but that Volumes 6 to 11 be kept confidential.

1.026 Within a few weeks of the Commission starting in October 1980 it grew to a size of about 25. It gradually increased over the next three years to between 50 and 60. Towards the end of 1983 the Government approved of a doubling of the staff and further investment in equipment. For most of its life Mr George Hutton was its Secretary. He has now moved from the Public Service to the private

sector. Unused as I was to the ways of the Public Service, I was heavily dependent upon the administrative skills of the Secretary and his guidance and advice. He gave full measure and I am deeply grateful. When he retired his place was taken by Mr Roger Webb. Though he was with the Commission for only three months, that period was not easy as he assisted in the transition to the National Crime Authority and the preparation of the Final Report as well as his normal administrative duties. His work was of a very high standard and his assistance and advice was invaluable. It would be invidious for me to select names from the rest of the staff. I have nothing but praise for their devotion and hard work. A spirit of great involvement and goodwill towards the work of the Commission was present throughout its life. Those who came to the Commission in its last months fitted into the community quickly. The Public Service is often the subject of criticism or the butt of jokes in the community. It is proper I should record that I was well served by their dedication and efficiency. I believe my Secretary, Ms Donna-Maria Clay, deserves a special mention. Without her ability cheerfully to maintain some kind of order in my office the job could not have been done. That she is staying on with the National Crime Authority will be very much to its benefit.

1.027 I have been well served by Counsel and solicitors attached to the Commission. Mr Douglas Meagher, Q.C., has been a source of enormous assistance. His advice, which I have frequently sought, has been wise. His energy and direction of the investigations has been of the highest quality. He was primarily responsible for the development of the systems and techniques used by the Commission. Not only the Commission, but also the Australian community should be forever grateful for his work. He was very ably assisted by Rex Wild, who was Counsel throughout the life of the Commission, and Lex Lasry who was Counsel for the last fifteen months. Both of these men gave of their all at a

high level. I am grateful indeed to them. The solicitors, seconded from the Attorney-General's Department and from the Victorian Law Department, deserve my appreciation and thanks. They worked long hours and beyond the call of duty.

1.028 I wish to record my appreciation of the great help given by other Departments of State. The Australian Federal Police and the Victorian Police seconded men from their Forces on a full-time basis. Their work was invaluable. Each Force provided a senior liaison officer; from time to time such officers were replaced whilst on vacation or on other duties but substantially Detective Chief Inspector Frank Green of the Victoria Police and Detective Chief Inspector Mike Phelan of the Australian Federal Police occupied these positions. I cannot speak too highly of the work they did. The Taxation Office and the Customs Service responded to every request in an efficient and speedy manner. In addition, the Customs Service seconded to the Commission a full-time officer. His work was invaluable. Regular conferences at the Commission included representatives of the Taxation Office, the Special Prosecutors' offices, Customs Service, Victorian and Federal Police, and the Australian Bureau of Criminal Intelligence. Their presence was essential and valuable.

1.029 Although on occasions I worked closely with other Government departments, I had a special relationship with the Department of Prime Minister and Cabinet, Department of Administrative Services, Department of the Special Minister of State and the Attorney-General's Department of the Commonwealth and with the Premier's Department, the Attorney-General's Department and the Corporate Affairs Office of Victoria. I am grateful for their ready, willing and competent assistance. In Interim Report No. 4 I was critical of the performance of the Commonwealth Crown Solicitor's Office. It is fair to record, as indicated in Chapter 6 of this volume, that I

have on many occasions used the services of the Australian Government Solicitor (as he is now known) in a series of court appearances. On every occasion the performance of his officers was of the highest professional standard and I was very grateful for their care and attention.

1.030 As appears in Chapter 4 of this volume, I visited Hong Kong on one occasion and Singapore on two occasions. In Hong Kong I received great assistance from the Royal Hong Kong Police Force, the Independent Commission Against Corruption, the Corporate Affairs Office and the Official Receiver's Office. In Singapore the Attorney-General's Office, the Singapore Police and the Corporate Affairs Office were of great assistance. For this I was truly grateful. It is of great importance in the areas of criminality which I was investigating, and which the National Crime Authority will be investigating, that these contacts be maintained and developed.

1.031 Finally, I should record the united efforts of the staff in the compilation of this Final Report. It has been a massive and demanding task. Long hours have been worked including Saturdays and Sundays. It will be apparent I could not have written this Report on my own. To have done so would have involved an extension of at least another six months. Thankfully that was not necessary. However, notwithstanding this great assistance, I have read and edited every section of the Report. I take sole responsibility for what appears in it.

CHAPTER 2 - NATURAL JUSTICE

"A good parson once said, that where mystery begins, religion ends. Cannot I say, as truly at least, of human laws, that where mystery begins, justice ends?"

A Vindication of Natural Society
Edmund Burke

2.001 A right to counsel; a right to know the case made against you; a right to know the evidence and to challenge it; a right to an opportunity to persuade; a right to be informed of the reasons for a decision: these are the rights allowed where natural justice is given.

2.002 From time to time I was urged to allow these rights, to afford this "natural justice". Dissatisfaction with my failure to accede to the extent demanded led to several suits in the Federal Court of Australia. I have reported upon them elsewhere. All failed.

2.003 Amongst those concerned with the liberty of the subject the concept of natural justice is valued highly, and at times raised on a pedestal. It imposes a high standard of conduct on those who seek to interfere with the person, property or rights of others. Thus it is a preserver of liberty and a protector of the citizen from imposition. It curtails the State especially; for usually it is only the State which has the overt power and authority to attack liberties and property. With the growth of statutory bodies and their power to confer licences allowing otherwise prohibited conduct to occur, there has been an extension of the strictures of natural justice. Likewise, where private institutions are given power and authority to grant or refuse a licence or to remove a right, the law has again required natural justice to be done.

2.004 The law requires compliance with natural justice not because of the inherent worthiness of the concept, high sounding though it may be, but because it is seeking to preserve the independence and freedom of the individual citizen. The fundamental premise is that a citizen is free to do as he chooses save as the law proscribes. This is the major tenet of democracy and distinguishes it from other systems of government. It certainly distinguishes the free man from the slave. In the latter case, all that is permitted is that which the master allows. Putting aside restraints of law, there is no freedom to do as you will.

2.005 A restriction on freedom may arise in a number of ways. It may be through action of Government. This is the most observable form because Governments act in accordance with proclaimed laws and regulations. The action is overt because there is no need for secrecy. It is not the only way freedom may be restricted if not destroyed. It can happen in private business, under civil law, where restrictions on freedom of action are constantly being imposed, that this is as observable but only in recent times has it led to concern. Another way in which freedom can be affected, often disastrously, is by those who are willing to break the law: the criminals.

2.006 The reaction of the State to these several forms of oppression has been different. In respect of the State seeking to oppress, there have been important changes. The most fundamental was some centuries ago when, at the cost of a crowned head, it was accepted that the law applied to all, including the State. In more recent times additional measures have been introduced. The requirement of natural justice is but one; the right of access to information under freedom of information legislation is another; as is the right to challenge administrative

decisions; and the provision of an Ombudsman. All of these innovations seek to achieve one end - the preservation of liberty.

2.007 In the commercial world similar steps have been taken. Laws now proscribe certain forms of contract. They allow the setting aside of onerous provisions. They provide, in legislation such as the Trade Practices Act, means by which private citizens or the State may prevent the absolute domination by aggressive men of business. There has been, as evidenced by the passage of this legislation, a realisation that, in the activities of lawful business, situations may be created where there is as much oppression of the individual's liberty as there may ever be by authorities exercising powers of the State.

2.008 In similar fashion, laws have been enacted in respect of trade unions, where a similar threat to individual liberty was thought to be emerging. Thus unionists now have granted to them various means of recourse to the Courts to safeguard their liberties within the trade union movement. It may be expected that this will attract more attention as union power becomes more dominant.

2.009 The State has also acted in respect of the criminal. It has provided laws proscribing conduct and has established law enforcement agencies to monitor and to take action against criminals who seek to interfere with the liberties of others. There is a recognition that this cannot be left to the individual citizen. He has not the resources to investigate and initiate action. Thus it is accepted by the State, and expected by the citizens, that it will act to preserve their liberties when they are threatened by people who defy or ignore the law and seek to impose upon citizens without lawful authority.

2.010 To preserve the integrity of the person and the liberties of citizens from the ravages of the criminal the State must exercise powers which interfere with the person and liberties of the transgressor. This produces a conflict, well recognised in the debate that has occurred in the past two years on the establishment of the National Crime Authority. It is important to note, however, that the ultimate objective is the same no matter which form of transgression (by the State, private business, unions or the criminal) is considered. The object is to preserve civil liberties. At times this laudable object has been overlooked.

2.011 There has been remarkable success in chaining the powers of the State to interfere in the life of the citizen. It has had and is still receiving intensive attention from influential parts of the intellectual community. There is a healthy wariness of official power and authority; a constant challenge to its action; and constant debate about the wisdom of its decisions. Likewise in other areas of overt power and authority. There is nothing like the same alertness and concern about the illegal oppression of civil liberties by criminals and their organisations.

2.012 In western democracies in general, and in Australia in particular, the major oppressor of civil rights and liberties is the criminal. He injures the person, steals the property and invades the privacy of the innocent without remorse or compunction. He affords no warning, gives no opportunity to be persuaded otherwise and does his best to ensure there is no sanction.

2.013 If the criminal in general is an oppressor, the criminal organisation is a tyrant. To all the attributes mentioned is added a remorseless march trampling over the honest and law abiding and treating them with

contempt. It comprises people motivated by profit, contemptuous of the law, careless about their victims, ruthless in their determination and remorseless in their endeavours. They profit on the immature, the gullible, the naive. They are unscrupulous in their endeavours to avoid apprehension. They have the wealth and intelligence to make unlikely any recourse by their victims or the State. The result is a tyrannous domination.

2.014 The victims, and other citizens, look to the State for protection, and for redress when injured. They receive scant attention. It is demanded they take steps to protect themselves. Should they be victim, it is required that they subject themselves to the ordeal of the witness box where often they are mocked and scorned with little protection offered by the Court. Only in recent times has provision been made to compensate them for their losses and that compensation is of meagre proportions. They are given no assistance or encouragement to pursue their rights to compensation at law. They are not fed information gleaned by law enforcement investigators even though it may be vital to their success.

2.015 On the other hand, the oppressor is given every advantage. The resources of law enforcement are small with the result that eight out of ten offenders may be confident they will escape detection. Those who are detected are given every protection. The investigators are subjected to every form of restriction that the human mind can devise short of absolute prohibition. The offender is given the protection of the general civil rights and liberties in full measure. He is equipped, often at State expense, with lawyers and allowed the benefit of all reasonable doubts and the advantages of every procedure. Not for him, if he does not wish, the trauma and uncertainty of the witness box. The victim may be as inarticulate, and as nervous, as the accused; but to the witness box

he must march where he is to suffer intense questioning whilst the accused sits back, safe in the knowledge that no such ordeal need befall him.

2.016 The balance could not without some difficulty be tilted further in favour of the criminal. Law enforcement agencies are subjected to constant critical examination. They are mocked, scorned and ridiculed. The criminal is given every means of attack. The rate of unsolved crimes climbs dramatically with situations arising where citizens neglect to report thefts, housebreakings, even personal assaults, out of a feeling of helplessness.

2.017 The only source of vocal complaint about this state of affairs is the Police Force. Its spokesmen constantly draw attention to it and call for redress. They ask for the additional powers and resources they require. Their cry is treated with suspicion. There is an inference that their demands are for malevolent purposes; that they seek the powers for their own self aggrandisement, so they may adopt an authoritarian position in the community. I do not think this is the reason for their cry. They are the ones constantly in touch with the many victims. They observe first hand the appalling consequences for people innocent of any wrongdoing and who are often victim as a matter of chance rather than deliberation. The attending police officer sees for himself an utter contempt for civil rights that far exceeds, in its incidence and effect, any official or government contravention that has yet occurred in Australia. Yet the understandable cry of the policeman goes unheard. Those not in contact with the victims but who sit in councils proclaiming concern at civil liberties never mention the greatest oppression of all.

2.018 The plight of the victims did strike a responsive chord in one area. In recent times women have resolved to correct the imbalance between the sexes of previous times. One such imbalance was the victim of rape. Her complaint was treated with suspicion by both the policeman and the law. Having suffered the dreadful degradation of her person - an intrusion of civil rights and liberties of the most violent nature - she was required to give evidence on at least two occasions and suffer the invasion of privacy of the most personal kind. Being so well organised to achieve other corrections the women's groups were well placed to demand this be corrected. And so it was. But the imbalance extends far beyond sexual cases.

2.019 The law enforcement procedures in this country are quite inadequate to deal with the intelligent and determined criminal. The statistics of those apprehended bear it out. Most are first offenders - amateurs caught, no doubt, because of their lack of experience. Many are of low intellect and poor circumstance. They have neither the intelligence to understand how they may exploit their rights to defeat law enforcement nor the money to pay for others better informed to assist them. Few intelligent and experienced criminals grace the gaols. The justification for such a system is often found in the saying that it is better nine guilty men go free than one innocent man be convicted. The nine guilty men being allowed to go free will include the intelligent resourceful criminal rather than the unintelligent amateur.

2.020 The reason for this state of affairs lies in the ultimate objective being forgotten. The enforcement of law is ultimately concerned with the preservation of the liberty of citizens. It is understandable, perhaps, that in a criminal trial this is forgotten. Such a trial appears to be concerned with destroying the liberty of a citizen, the accused. Since he is the focal point, and the concern

dwells upon him and what it is said he did, it is overlooked that if he was the culprit he was the oppressor, not the oppressed. It was he who took upon himself, without lawful power or authority, the unjustifiable interference with the civil liberties of an innocent and law abiding citizen. The purpose of the trial is to redress the balance, to put right what has been done wrong. The investigation that preceded the trial is designed to inform the State of the facts so that the wrong that was done to the victim may be redressed. The punishment that is visited upon the convicted is on account of the wrong that has been done, usually to a fellow citizen and not to the State.

2.021 Hence the police investigation and resulting trial are fundamentally concerned with the preservation of liberty, not its destruction. Undoubtedly there is a serious conflict because a system which necessarily allows the liberties of a citizen to be infringed does give rise to a potential for abuse. There must be available a checking of the process to ensure that it is not abused. But, in the imposition of such checks and balances, sight must not be lost of the principal and fundamental objective, namely to preserve the civil liberties of law abiding citizens from destruction by those contemptuous of the law. Restrictions imposed on the system of administration of justice must be carefully constructed so that the ultimate objective remains attainable.

2.022 A basic requirement in the administration of justice is the acquisition of information. Without information about abuse the State cannot take action to redress it. When those sensitive to civil liberties considered the remedies to be allowed against the State, they quickly appreciated that a right to information was essential. Without information the rights conferred were empty of substance. Hence the Freedom of Information legislation. The position is no different in the

enforcement of criminal law except that the information is held not by the State but by private individuals. Without information, the whole apparatus of law enforcement fails.

2.023 Where it is alleged a person has offended against the law and transgressed another's person or liberty it is important that certain protections be available to ensure that the charge is warranted. It is equally important, where the charge is warranted, that there be a means by which it can be established. The freedom of nine guilty men to avoid the imprisonment of an innocent man may appeal to the sentimental; but the preferable result would see the conviction of at least eight of the nine with the innocent remaining free. The community derives no pleasure from the liberty of a criminal to impose himself on it without fear of the consequences.

2.024 The gathering of information must involve an invasion of privacy. Where a citizen seeks to keep information secret, its gathering invades not only his privacy but also his freedom to keep it secret (which is a different and greater invasion). If he must personally disgorge that which he knows he is subjected to an imposition on his freedom to do what he will with his person. Just as some governments and public servants dislike the interference they may see in Freedom of Information rights, so too does the private citizen. Yet without that interference the State cannot enforce its laws; and if it cannot, the civil liberties of law abiding citizens, flagrantly transgressed as they may have been, are left unprotected against future transgression, and are not remedied by any punishment visited upon the transgressor.

2.025 The operation of a Commission of Inquiry is directly concerned with gathering information, since that is its prime task. Perforce it must intrude on privacy and compel the disclosure of what some seek to keep secret. It

transgresses privacy and to the extent described in the last paragraph it restricts liberties. Looked at from the perspective of the subject of its enquiries, it is a transgressor of liberties. Where, such as in my instance and that of many other recent inquiries, it is concerned with criminal activities, from the perspective of others it is concerned with upholding civil liberties because by its enquiries it will allow redress of grave transgressions. It does this by gathering information and informing those charged with the duty of correcting the abuse.

2.026 As I mentioned earlier, those believed to have transgressed have a right to protection of their civil liberties. It is not absolute. If they have infringed the liberties of others the State is entitled to infringe their rights so as to redress the situation and hopefully prevent its recurrence. Thus there is no principle that they are entitled to every remedy or device which would permit the checking of the law enforcement process. They are entitled to some rights but only such as are consistent with the successful application of the law. If rights and privileges are granted of such an order as to prevent law enforcement being effective, then the transgressors are placed outside the law, and become tyrants. If they are contemptuous of the law, the tyranny will not be benevolent.

2.027 The time and place for concern for the civil rights of those allegedly offending the law is at the point where they are at risk of losing their rights. The basic and most important rights are those relating to liberty of the person and possession of property. There are, of course, many other rights but they are of lesser significance and their protection is not as important as is that of liberty and property.

2.028 The law identifies the means by which the State may interfere with liberty and property. Generally it is in judicial proceedings though many forms of administrative action may now allow it. The procedures are well established and that is the time when the principles of natural justice should be applied. At that point they may be given effect without causing an imbalance between the grant of rights to the alleged transgressor and the redress of the damaged rights of the victim.

2.029 Prior to effecting redress much work needs to be done in gathering information. Natural justice does not have a role to play; it is to have its effect and to impart its fairness at a later time. The subject of the investigation is certainly entitled to justice but only in moderate measure at the proper time. The community is entitled to its measure of justice which would be denied if attention is paid only to the interests of the alleged offender.

2.030 There is a need for rules regulating the manner of investigation. These are designed not to frustrate the investigative process because its success is vital to the protection of the civil liberties of the law-abiding community. Rather they are to ensure that the means selected impose least intrusion upon civil liberties. But this cannot be carried so far as to prevent the investigation as that would frustrate the overall protection being sought.

2.031 Hence there are regulations governing the search of premises, requiring deposition on oath of the requisite state of mind, and approval of a justice. Where search occurs without regard to propriety the information collected may still be used though the searcher may be punished. This is because the law is as concerned with the intrusion on civil liberties demonstrated by the evidence,

albeit illegally collected, as it is with the transgression of the searcher. A wrong committed by another does not excuse the first wrong. Both should be punished. In the United States for many years a different view prevailed, allowing the principal wrongdoer to escape where the investigator erred; but that is now changing as the importance of the ultimate objective is given greater weight.

2.032 In the conduct of my Commission I was requested daily to authorise the process by which information may be gathered; that is the issue of summons. This always intruded on privacy. My approval was sought, not merely to do that, but also to discover that which many preferred to keep secret. From the very beginning I was compelled to grapple with the balance that had to be struck between the intrusion on civil rights of the subject of the investigation and the correction of his intrusions on the civil rights of others.

2.033 On one view, if natural justice applied at this point, I was obliged to permit representation, advise of the evidence, allow argument and deliver my reasons. I took the view that this was neither necessary nor desirable. It was not necessary because the right to privacy was not absolute; it had to give way in favour of those charged with enforcement of the law. It could not stand in their path, for without information the law could not be enforced. My task and duty was limited to ensuring that the request for access was born out of proper motives. The subject would have his opportunity at a later time, at a time when his liberty or property was directly and immediately at risk.

2.034 Nor was it desirable that I permit the subject to know what was being gathered and the opportunity to seek to prevent it. I was dealing with people many of whom were willing to take any steps, legal or illegal, to prevent the

gathering of the information. Knowledge of the stage I had reached, or the direction I was travelling, would be of assistance to them in preventing my success. This was no empty fear. Later I report upon a blatant removal of documents out of my jurisdiction for the purpose of preventing me studying them. To facilitate those endeavours would be to permit those responsible for blatant transgression of the civil rights of fellow citizens to escape the consequences.

2.035 When my enquiries moved from the issue of summonses to their return, I did allow a witness to be represented. I did this so that the witness could seek advice on his position in answering questions. Generally I did not allow the representative of a witness to be present when other witnesses were examined; nor did I allow all information I had gathered to be made available to any witness. Nor, at the end, did I allow submissions to be made on behalf of any person or institution. There were some exceptions to this which I report upon shortly.

2.036 My reason for not allowing the effective implementation of the principles of natural justice was that in almost every case the result of my deliberations was the referral of the matter to ordinary law enforcement agencies. Once in their hands, and following their initiating process, the full requirements of natural justice would be met. In none of the matters did I expect that an opportunity would not be presented at some point, albeit long after I had completed my part of the task. It was therefore unnecessary to give an opportunity; and it was inimical to the success of the investigation both as done by me and as to be done by the law enforcement agency to which I intended to report the matter.

2.037 My adoption of this approach gains support from the words of the Chief Justice of the High Court in Church of Scientology Inc & Anor -v- Woodward & Ors (1982) 43 ALR 587 at 594-5, where he said:

"It is obvious that intelligence which falls far short of establishing that a person is a risk to security may nevertheless be relevant to security. A scrap of information which, in itself, may seem to have no bearing on security may, when put together with other information, assume a vital significance. An officer seeking intelligence will not always start with a hot trail but may need to begin by collecting information in the hope that it may ultimately prove to be of importance. The necessary concession that ASIO is entitled to make initial inquiries reveals the difficulty in the suggested construction. It is impossible to suggest any rational test by which one could determine the point of time at which one should ask the question whether the inquiries so far made have established that the intelligence is relevant to security. Today's intelligence may seem to establish that a suspected person is a loyal citizen; further information obtained tomorrow may show that he is engaged in espionage or subversion. There is nothing in the Act of 1979 that leads to the unlikely conclusion that ASIO must cease to obtain intelligence about a particular person unless its initial investigations are successful in establishing that he is a security risk. Moreover, intelligence gathered in the honest belief, or in the hope, that it will be relevant to security may, in the light of further information, prove to be valueless. Finally, it should be remembered that it may be relevant to security to establish that a particular person is not a security risk."

In that case the Court was concerned with a submission that it had the power to declare that the activities of ASIO in collecting intelligence about an organisation were unlawful; and an injunction was sought to prevent them continuing. The Court, with the dissent of the Chief Justice, held that ASIO was subject to judicial review. However, notwithstanding the departure of the other four Judges from the Chief Justice on this issue, there was considerable unanimity as to the proper collection of information by ASIO. Mr Justice Mason, at page 602, said:

"...it would be absurd to suppose that Parliament intended by s 17(1)(a) to confine ASIO to the obtaining of intelligence which on ultimate analysis in the light of all established facts, whether known to ASIO or not, related to a person who is a security risk. In the very nature of things a security intelligence organization from time-to-time receives information, not always reliable, tending to suggest that an individual is a security risk. The information has to be checked out and followed up. This may, and probably will, involve the obtaining of intelligence relating to the alleged suspect. The end result of the inquiries may establish to the satisfaction of ASIO or even objectively, that the suspect is not and never was a security risk. But this does not mean that the intelligence which ASIO obtained was not relevant to security. Intelligence is relevant to security if it establishes or tends to establish that a person suspected of being a security risk is, or is not such a risk. Moreover, it may well be that intelligence is relevant to security, so long as it is obtained for the purpose of determining whether a person alleged or thought to be a security risk, is such a risk. Despite this, in some cases it may be possible to infer from the character and reputation of the Plaintiff that ASIO could have no information in its possession suggesting that he is a security risk or that if it has, that information could not be credible, simply because the suggestion that the particular plaintiff is a security risk must be regarded as fanciful."

Mr Justice Brennan at page 614 noted that:

"...it may be necessary to evaluate rumour or suspicion as well as proof. It may be reasonable, even necessary, to determine the gravity of a risk by intuition, rather than by deduction."

2.038 This view was later supported by the views expressed by the High Court in News Ltd. -v- N.C.S.C. (1984) 52 A.L.R. 417. In that case the NCSC was conducting an investigation employing powers not unlike mine, with a similar exclusion of News Ltd. from the enquiry except when its witnesses were giving evidence; and a denial to News Ltd. of access to information it had gathered. The Chief Justice of the High Court said at page 429:

"The Full Court of the Federal Court accepted that the Commission might, as a result of its hearing, make a report adverse to the respondents and placed considerable weight on that circumstance in reaching its conclusion that the course proposed by the Commission did not satisfy the demands of natural justice. Although, as I have indicated, I do not agree that the publication of adverse findings, conclusions or evidence after a hearing such as the present is normally, and without more, one of the functions of the Commission, that does not, in my opinion, make a critical difference to the result. Let it be assumed that as a result of the hearing the reputation of the respondents may in some way be affected. The question would then be what natural justice requires when a hearing, publicly announced but held in private, is held only for the purpose of investigation, the hearing being one in the course of which no issue can be determined, and as a result of which no right, interest or legitimate expectation can be affected, although the reputation of the respondents may be damaged. That question has to be answered in the light of a statutory framework which expressly recognizes the need for expedition and gives the

Commission power to decide who may attend and who may intervene at the hearing. If the Commission were to accord to all the persons whose reputation might possibly be affected by the hearing a right to cross-examine the witnesses and call evidence as though they were in a court of law, the hearing might become so protracted as to render it practically futile. In these circumstances, with all respect, I find it quite impossible to say that the rules of natural justice require the Commission to proceed as though it were conducting trial. It seems to me in no way unfair that, at a hearing of the kind which I have described, the respondents should not be entitled to cross-examine such witnesses as the Commission may call, or to call evidence of their own. If proceedings are subsequently brought in the Supreme Court against the respondents, they will, of course, be able to test by cross-examination the evidence adduced, and to call evidence themselves.

Mason, Wilson and Dawson JJ said at page 439:

"In our opinion the Commission will comply with the statutory mandate to observe the rules of natural justice in the present case if it proceeds to allow each witness who is called to give evidence to the legally represented, with freedom for that representative to participate in the examination of the witness, and for the provision of a transcript of his evidence. The conduct of an investigation in such a manner is fair and nothing more is required."

2.039 In the News Ltd. -v- NCSC case there was discussion about allowing representation and argument at a point where the NCSC was proposing to make a final judgment on the merits and to publish that judgment. The High Court questioned whether publication would be allowed. That is not a consideration affecting me as I clearly have no power to publish my report. Indeed, to the extent that I gather

evidence of criminal activity, that evidence is provided to law enforcement agencies and the only publication is that found in the initiation and conduct of proceedings in Court.

2.040 I do report to Government. This report does contain a number of accounts concerned with the conduct of a number of people. The report is made for the purpose of informing Government of the magnitude of the problem and certain difficulties perceived in the enforcement of law. It is not made for the purpose of depriving those named of their liberty or possessions.

2.041 It may well be that my actions will have an adverse effect upon reputation. That cannot be avoided. It is accepted that the administration of justice would be frustrated if citizens, believing a situation existed, could not report without first permitting the accused a right of audience and hearing submissions. Even the law of libel and defamation excludes from its operation a bona fide report in such circumstances. Again the explanation in principle is not difficult to find. Such a report may initiate redressive action but it does not preclude at a later time full measure of fairness being extended to the accused. That an opportunity will be given later is sufficient to ensure justice.

2.042 The course I have taken I believe to be correct in principle. It was also the only practical way. To allow full representation as if it were a committal for trial, or the trial itself, would have taken a great deal of time. Not only would I have not advanced in my investigations to the extent I did but it would have given countless opportunities to those anxious to avoid their criminal activities being exposed to disrupt the investigations by fruitless, but time consuming, applications to the Courts.

2.043 I have reported elsewhere on the time occupied in answering applications to the Federal Court. It was fortunate that only the Federal Court had jurisdiction. In one case that has come to my attention, being an instance where a State Ombudsman has jurisdiction, an investigation over two years was punctuated by no fewer than 180 complaints to the Ombudsman. Every complaint was found "not proven", this being the farthest the Ombudsman could proceed in saying it had no foundation. The disruptive effect of constant investigation of the investigators and the prejudice to the outcome needs hardly be stated and no doubt was the prime objective of the subjects of the investigations.

2.044 The preservation of civil liberties requires as much attention when the trespassers are criminals as when it is the State. Whilst the investigators of the State require regulation they should not accept nor should there be imposed such restrictions or means of redress that in the hands of the unscrupulous the investigations may be frustrated. It should be borne in mind that the amateur criminal, the criminal of low intellect or scarce reserves of wealth, takes no advantage of the protective measures. In my case, I was not subject to challenge in the Courts by the Union or its members, notwithstanding their dissatisfaction with the progress of my enquiries. I was taken to Court, as is almost always the case, by the wealthy and intelligent; by the type of person who is potentially the greatest threat to civil liberties of the citizen. Such a person is no stranger to the legal system nor is he shy of employing the very best that money can command to erect a formidable barrier against investigation.

2.045 My experience is no different from that of law enforcement agencies. It simply reflects the power of wealth and privilege. Such people have enough advantage without placing more in their hands.

2.046 I mentioned earlier that there were some exceptions. In one case I came to the conclusion that no harm would be caused by informing the subjects of the investigation of the evidence and that I would be assisted by submissions. The matter was of small compass. I took submissions and they were helpful. In this case I adopted this course not so much out of a belief that natural justice compelled me to do so but rather out of my conviction that it would be of assistance to me.

2.047 The other case was the representation of the Union, both the Federal body and the Victorian branch. They were represented separately. Their counsel attended substantial parts of the public sittings of the Commission. Since my inquiry was directed at the Union, I initially believed I would be assisted by the representation. I was anxious to determine whether a case could be made that the union was powerless to prevent the intrusion of criminals into the controlling executives and whether there was a body of men within the Union anxious to expel them or to diminish their influence.

2.048 In the first few months I believed I would receive this assistance. It then became apparent that those instructing the representatives of the Union wished their representatives to protect the individual unionists who appeared as witnesses as much as they did the name of the Union itself. This was the situation for as long as Mr Galbally appeared for the Union. When his retainer finished and Mr Spencer appeared for the Federal Union the attitude changed. However this coincided with the death of Mr Nicholls and a resolution of the Victorian Branch accepted at a meeting at the Council Club Hotel. The resolution called on all members to refuse to "cooperate" with my enquiries. This was interpreted by all unionists thereafter called before me as an instruction to not answer questions.

It was upheld by unionists in every State notwithstanding that it was merely the Victorian Branch which purported to pass it.

2.049 I gave the Union and its members many months to reconsider this position. On many occasions I drew the attention of the Union's Counsel, Mr Spencer, and the attention of the Victorian Branch's Counsel, Mr McDermott, to the result of adopting that position: it was that I was compelled to draw my conclusions unassisted by evidence from the Union. It also meant that the Union was publicly demonstrating to me, and to the country, the policy of non-cooperation with lawful authority in the examination of criminal matters. Despite many opportunities to meet this conclusion, to reconsider after the heat generated by Mr. Nicholls' death had vanished, the whole Union steadfastly maintained its position.

2.050 Finally, after some executive members of the Victorian Branch had been dealt with by the Courts for their refusal to comply with the law, and had been punished, I again called some unionists who, so it appeared, had threatened another non-unionist who was before me as a witness. The executive members were asked for their explanation; they responded in a contemptuous manner for which they were later punished in the Courts. Once again, Mr. Galbally's hand was observed as being present; and by the submissions he made to the Court on the occasion of their trial for their contempt of me he took advantage of the privilege given to legal representatives in Court to utter slanderous and contemptuous remarks directed at me and the counsel assisting me. It is plain enough that the Union, at least in the Victorian Branch, was either counselled or incited by Mr Galbally in its attitude of non-cooperation directed at me, or was at least assisted by him. However that may be, the Federal Union and the

Victorian Branch had separate counselling from other lawyers and notwithstanding the common sense and sound advice I believe those other lawyers gave, chose to adopt the attitude they did.

2.051 In the absence of evidence from the Union, and in face of the contemptuous attitude it was displaying, I saw no benefit to be derived from submissions on its behalf. For there to be effective submissions it would have been necessary to reveal a great deal of information given confidentially by witnesses who professed a fear for their lives if their identity became known. There was ample evidence before me to justify those fears. Neither the Federal Branch nor the executive of the State Branch was making any attempt to stand apart from the well-known criminals who held significant office or had substantial influence on the Union's deliberations. I did not believe it would serve any useful purpose to reveal to the Counsel appearing for the Union the vast amount of confidential information when I would be compelled to request assurance he did not reveal it to his client. Indeed, no useful purpose could be served unless and until the Union released its members from the direction not to cooperate.

2.052 In all of these circumstances I made it clear to the Counsel appearing for the Union that I would not take submissions from him. I did so on many occasions and on each occasion drew his attention to the major obstacle, the Union resolution and its effect. Notwithstanding this, there was no variation to the resolution nor any withdrawal.

2.053 A final consideration was a relatively early decision on my part that de-registration was not an appropriate answer to the problem of a Union dominated by criminals. I have explained my reasons for that in Volume 3. Once I had come to that conclusion, the continued existence of the Union was no longer in issue; but that was

not a matter to concern the Union as much as the particular office holders. Thus on a major matter of concern I did not require argument to persuade me that the existence of the Union should not be terminated.

2.054 There was one matter of industrial concern, that being the extortion practised on the wharves at Port Adelaide. It was suggested that an answer may lie in the permanent employment of the painters and dockers. This was a matter on which I expected the Union to have a legitimate view and I was anxious to hear it. Mr Spencer, on behalf of the Union, was invited to make submissions to me provided I had the benefit of evidence from Union members in Adelaide on this important matter. No such evidence was offered.

2.055 I did allow some cross-examination of witnesses by the Union representatives since this was helpful to me in extracting all the information relating to certain topics. Generally, however, the representation of the Union was not helpful either to it or to me. I absolve completely the excellent service which Mr Spencer and his instructing solicitor, and Mr. McDermott and his instructing solicitor, sought to give the Union both federally and in Victoria. It was not their fault that the Union took the course it did and refused to accept their advice about a different course.

2.056 There were a number of occasions when I promised to allow an opportunity to Counsel appearing for witnesses to recall their witnesses or to call other witnesses or to cross-examine certain other witnesses. My illness, the difficulties in transition, and the pressures of time have prevented me from honouring those undertakings. From a personal viewpoint I am sorry this has occurred. However, in every case they will have, at committal proceedings and at trials, the opportunity to conduct that examination. It is all that is normally

provided to an accused. I see no reason why a third opportunity is required merely because there is a Royal Commission.

2.057 There is a final consideration which affected me greatly in respect of individuals of whom I suspected criminal behaviour. As I have explained, I had little hesitation in employing the compulsive powers granted to me in order to collect information which otherwise would not be procurable, or if there are other means, they were not economical. The collection of this information was an essential element in achieving effective law enforcement.

2.058 However, often I reached a further stage of the investigation where the information had been procured and I had formed a strong suspicion that criminal offences had been committed. At this point, the question arose as to what I should do. There were two paths I could follow. One was to act like a Court and allow the matters to be put to the subject of the investigation, and hear his answer. The other was to place the matter in the hands of law enforcement agencies and permit them to follow their normal course. I chose the second course.

2.059 It was tempting to adopt the first course. I have been engaged in the law for many years, and am very familiar with the operation of the judicial system. The concept of acting like a Judge, allowing Counsel assisting me to act like a prosecutor, and permitting the "defence" to act as they would in a Court, was professionally attractive. However, there were inherent difficulties in the application of this style of proceeding.

2.060 Before matters are prosecuted in a Court, the accused is usually apprehended and questioned. He is normally given the opportunity to answer the allegations made. This is a basic and fundamental principle of

fairness. If it is left until the criminal court proceedings are initiated, an innocent man would be put to a great deal of expense and anxiety in circumstances where he had a straightforward explanation. Now, it was open to me to afford the same right. After all, I was in a position to compel the accused to enter the witness box and answer questions. Plainly I could offer that without compulsion. But if I did, and if the accused was not innocent, then the answers he gave me from the witness box would not be capable of being used against him in criminal proceedings. Thus whilst the course would serve well the interests of a man ultimately found innocent of the matters, it would not serve the interests of the community should he be guilty. The opportunity presented to law enforcement agencies of questioning the suspect and employing his answers against him would be lost.

2.061 A second aspect of this which weighed heavily with me concerned the rights of the guilty man. If questioned by normal law enforcement agencies, he had the right to refuse to answer questions and remain silent. Such a right did not exist before me. Whilst I am adamant that such a right ought not to stand in the way of the collection of information revealing criminal activities, once that material is collected and serious consideration is being given to the initiation of the criminal process, I am not persuaded the subject of the proceedings should be compelled to give evidence. This would lead, if nowhere else, to his defences being explored and brought to the attention of the authorities well before the trial commenced. One day the law may countenance such a development, as it has already in respect of alibis. But it has not yet reached that stage, and I was not prepared to employ my powers as Royal Commissioner to achieve it. Of course, had a charge been laid, the law as propounded by the High Court in Hamidan -v- Woodward clearly denies me the use of those powers.

2.062 An alternative course was to request the questioning of the accused by law enforcement agencies and then conduct a proceeding like a hearing at which the allegations were put and argued. Any "confession" could have been adduced at these proceedings. However, this is to equate the Royal Commission with a committal. Whilst from time to time it was suggested to me that I should determine matters as if I were a Magistrate presiding at Committal proceedings, the fact was that I was not endowed with committal powers. I could not commit any person to trial; I could not grant bail; I was not empowered to determine guilt or innocence; nor did I have any authority to make a judicial pronouncement that a prima facie case had been established. A Royal Commission is simply a fact gathering authority, and its powers are limited to transmitting those facts to Government or Governmental agencies. Indeed, I did not even have power to initiate a prosecution. All I could do, and have done, is recommend action by those who are empowered to discharge such tasks.

2.063 It is a mistake to equate a Royal Commission with judicial office, or even with law enforcement agencies. An examination of powers granted to it reveal the absence of any appropriate powers for either function. Where such powers are granted, there is also imposed a wide range of duties evolved over many years. Just as it is a mistake to assume the Royal Commission is endowed with such powers, so it is a mistake to assume that duties appended to those powers are also imposed upon a Royal Commission. Those duties are incidents of the powers; without the powers there are no such duties.

2.064 The result of these considerations was a firm belief on my part that I was not subject to any duty to provide natural justice in the form of allowing allegations to be put and argued by the person accused. I took my investigations to a point where reasonable, indeed firm,

suspicion arose that criminal activity had occurred. I then referred the matters to ordinary law enforcement agencies for the apprehension and questioning of the accused, the preparation of briefs for prosecution, and the initiation of the judicial process. Whilst my office offered assistance to those agencies, the powers of my office were not employed against the accused once referral had occurred. At that point it was a matter to be completed in the normal manner. To ensure as fair a trial as possible, I eschewed any public declaration that the matter had resulted from my work for fear that it may adversely affect a jury.

2.065 I believe this course to have been proper, and to be one which accommodated with fair balance the competing interests of the accused, the victim and the interests of the public.

CHAPTER 3 - MR PACKER'S COMPLAINT

3.001 On 28 September 1984, merely four weeks before I submitted this final report, Mr Kerry Packer issued a public statement complaining about his treatment by, and of his sufferings as a result of the activities of, my Commission. By that date the greater part of the drafting of my report had been completed. In particular, the drafting of the previous chapter dealing with natural justice was finished, as was the whole of Volume 2 dealing with investigatory techniques. A close examination of those writings, together with my account of the history of the transition to the National Crime Authority, would reveal my answer to his criticisms. However since his statement received wide publicity, it is desirable that I answer those aspects of it dealing with concepts of natural justice in a section of my report devoted solely to that task.

3.002 I do not attempt in this chapter to deal with all aspects of Mr Packer's statement. Where he has dealt with factual matters that are the subject of this report, I have extracted the relevant passages of his statement and commented upon them in the appropriate chapters. Nor do I deal here with the inference that could arise from the public statement that I have acted in collusion with the Fairfax Press to denigrate Mr Packer so that it could achieve some commercial advantage. That is dealt with in Chapter 6 of this volume. In this chapter I deal with the natural justice argument alone.

3.003 In the public statement Mr Packer complained that I had acted "grossly unjustly and improperly", and denied him "the most basic civil liberties any Australian should be entitled to expect". He identified himself as the

person whose code name in articles published by the National Times was "Goanna", and said it was common knowledge he was that person. He complained that I had omitted to declare publicly that the article in the National Times was a "journalistic fraud"; and that although I did take action in respect of another matter to be published in that newspaper, I took no action in respect of Goanna. This, he said, was an "implicit endorsement" of its publication. As a result, he said his reputation was damaged and his family had suffered. This had started, he claimed, with the public examination of him before my Commission, and culminated in the publication of the National Times. He denied each of the allegations he was able to identify in the article. Further, he claimed the making of the allegations was reckless or deliberately false - that is malicious.

3.004 In developing the matter Mr Packer complained that he had been denied representation before the Commission as witnesses affecting him were called, despite his anxiety to be present. He had not been directly challenged on the matters in the witness box or otherwise. The hearings, he complained, were secret. He had been denied access to transcript of those witnesses and knew not what they had said. This he likened to the Star Chamber or the practices of the KGB trials conducted in the Soviet Union. In a supplementary document he relied upon the Salmon Royal Commission Report, and what he perceived were six "cardinal principles" for the conduct of a Royal Commission, and asserted that I had not complied with them. He set them out.

3.005 The complaints of Mr Packer were made vehemently. He sought, so he said, no greater or lesser rights than a "house burglar". But he did want those rights in full measure. He believed he had been denied them.

3.006 These are serious allegations. There was considerable pressure applied on me by the media to make an immediate response. Had it not been that my report was rapidly approaching finality, I would have responded other than in this report. However, since the report already dealt with many of the complaints, it was more appropriate for there to be a measured answer, not one produced in the heat of the attack. For this reason I have not concerned myself to answer until now.

3.007 It was highly regrettable that a copy of the matters referred by me to the Attorney General, who forwarded them to the National Crime Authority, should have found their way into the National Times. At the time of their preparation and delivery, I took steps to ensure that the security of the document was classified highly, and I myself delivered the original to the personal representative of the Attorney-General. It was not my intention that it should be published; to the contrary I sought to ensure it would not be published. Having made enquiries of my staff, I am satisfied that its publication was not as a result of action taken by any of them. Information has come to my attention that the source was at another place. I have been told by the person responsible for that other place that it would have been impossible for it to have been released from there. I have no power to investigate the matter further.

3.008 I regard the publication as regrettable not merely because of the inevitable harm to Mr Packer's reputation by a means other than that which is proper. That is, of course, a very serious matter. Throughout my Commission, but especially in the last two years, I have endeavoured to ensure that where wrongdoings are alleged, they are dealt with by ordinary process of the Courts of Law. So successful has this been that the prosecutions and civil actions resulting from my work have not been publicly

identified. In the past twelve months there have been many false allegations that no court proceedings ever result from my work. It has been tempting to publish the very considerable list of such matters in an answer to those critics, but I have refrained from doing so. In this fashion I have endeavoured to ensure that a trial of the accused takes place without there being any suggestion that the accused is a criminal identified by me. Naturally, I wished the same to apply without favour to all such people I identified. If there were to be proceedings taken against Mr Packer, I would and do have precisely the same view of the proper approach. I had not wished to see him labelled as a product of my enquiries.

3.009 An equal consideration, however, for my seeking to maintain a high level of security on the matters referred to the Crime Authority was the prejudice likely to be done to the investigations should they be publicly revealed. Of course, since I was disposing of the investigations by transferring them to the Crime Authority, this consideration was one of more direct concern to it than to me. Nevertheless, I was concerned as a citizen that the transfer should be effected in such a manner that those investigations proceeded without interruption. A glance at the contents of the chapter dealing with the transition, and the correspondence between myself and others, will indicate the depth of my concern. I certainly did not wish to see the investigations destroyed by the public revelation of the progress that had been made, and the concomitant warning to those who were the subject of investigations.

3.010 There were a number of people subject to those investigations who I feared, if they knew the extent, would seek to frustrate them. Mr Packer is one such person. In the course of my investigations I am satisfied he caused documents to be removed from the jurisdiction so as to deny

them to me. I report upon that matter in detail in Volume 9. I intended not to give him any further opportunity to take such action by keeping from him the extent of my investigations. His suggestion that in such circumstances I would countenance the public revelation of my investigations into him, thus equipping him with the latest information on progress, is not acceptable.

3.011 Likewise it is nonsense to suggest, as he does, that in the formulation of matters for investigation by the National Crime Authority I would act maliciously, or with a reckless indifference for the facts. Nothing would be gained by such a course, other than the destruction of my own reputation in the eyes of those on the new Authority. As they examined the material they would quickly ascertain its defects, and reject it. This would result in other referrals being regarded with disapproval and readily put aside too. There is no advantage to me in taking such a course. Indeed, the preparation of the material was an arduous and time consuming task. I certainly would not have wasted the energies of myself or my staff on matters of no concern. Mr Packer's allegation is baseless, and foolish, for it merely compels me to make these observations, which will do him no good.

3.012 I turn away from the intemperate observations of Mr Packer to the matters which are of greater concern and, I suspect, are the least understood in the community. These are the criticisms founded upon the alleged denial of civil rights.

3.013 The progress of my Inquiry, so far as it affected Mr Packer (and he was by no means the only subject of enquiry nor the major one), may be divided into the following segments:

Mr Packer's Complaint

1. Public examination of Mr Packer's associates in which they declared they delivered cash to him or his chauffeur.
2. Federal Court proceedings brought by Mr Packer to stop my enquiries.
3. Public and private examination of Mr Packer.
4. Private examination of witnesses affecting Mr Packer.
5. Preparation and delivery of summaries of relevant criminal activities to the Attorney-General, and their delivery to the National Crime Authority, identifying Mr Packer as the subject of current investigations.
6. Preparation and delivery of this report containing sections describing the status of investigations into matters touching upon Mr Packer, and recommending further investigations by various law enforcement agencies.

I will deal with each stage in turn, giving consideration to the complaints by Mr Packer of the asserted lack of civil rights.

1. Public Examination of Associates

3.014 This occurred in September and October 1983 in Brisbane. The associates were represented, and once Mr Packer's name was mentioned, his representatives were present too. The transcript was available, and was taken by them.

3.015 The "naming" of Mr Packer was not by Counsel assisting me putting the name to the associates, but was by the witnesses identifying the person to whom they delivered

substantial sums of cash which I was investigating. The witnesses were giving direct evidence, for they had delivered the cash themselves. It was not hearsay. It was admissible in any Court. It was the undisputed truth.

3.016 Accordingly, the "naming" of Mr Packer was by properly admissible evidence, and was a legitimate step in my enquiries. Immediately the naming occurred I gave the opportunity to Mr Packer's representatives (who were present) to proffer an explanation so that if there was an innocent account, it could be revealed without delay. They declared that there was an innocent account, and as soon as Mr Packer returned from overseas, it would be given. Arrangements were made for this to be done.

3.017 There is no room for legitimate complaint in these arrangements. Many witnesses have been called before my Commission and have explained matters which, if left unexplained, could give rise to suspicion of wrongdoing. I am not conscious of any case where a legitimate explanation has been given, and harm to reputation has been suffered. Had Mr Packer delivered his explanation immediately, and had it been acceptable as an innocent explanation both by me and the public, he would have suffered no harm.

2. Federal Court Proceedings

3.018 Instead of doing what his Counsel had promised he would do, he attempted to stop my enquiries. It was he who initiated the Federal Court action, drawing into the fold all of the associates who I had been examining. By this action, which he chose to take without any encouragement from me, he accentuated the difficulties he was in. He was entitled to take such a step. But having exercised the right, he cannot complain if the result adversely affected his position. It certainly did.

- (a) By seeking to stop my enquiries before giving his explanation, he allowed the inference to arise that his explanation was not one of innocence. The explanation later given was that he had simply borrowed the money. That had already been said by one of his associates. His unwillingness to enter the witness box and confirm it, but instead to engage in costly Court proceedings had the effect of heightening my suspicions that the explanation was not true. No doubt many in the community shared my suspicion, and his reputation suffered accordingly.
- (b) By taking the proceedings he delayed the giving of the explanation, and permitted speculation to arise as to what he would say. This, again, no doubt affected his reputation and he has only himself to blame.
- (c) In the proceedings he challenged my bona fides in pursuing an explanation. I was engaged on a drug enquiry, but had taken considerable care not to mention that fact. I had two reasons. One was to ensure that reputations were not harmed without cause. The other was to maintain the security of those investigations. But by challenging my bona fides, he compelled disclosure of the nature of the investigations. Even then, I took great care to maintain confidentiality. The solicitor to the Commission on my instructions wrote to Mr Packer's solicitors. The letter was marked 'confidential' and set out the basis for the enquiry which I was making. I took this course as I was determined that no disclosure of these matters would be forced on me in the Federal Court proceedings and also to let him know as a matter of fairness. To my horror, in open court, Counsel for Brian Ray read the letter in full and thus announced the nature of the enquiry to the world. I had no part

in that; I did not seek it to be done; I did my best to avoid it. There is little doubt that its revelation has harmed Mr Packer's reputation; but the responsibility lies other than on my shoulders.

- (d) The final matter was one entirely attributable to Mr Packer's own Counsel. He chose to make the baseless allegation in the Federal Court that I or my staff had wrongfully intercepted a telex passing between Australia and Hong Kong. The telex had in fact been handed to my staff by a solicitor in Hong Kong who had acted as agent for Mr Packer's own solicitors. The allegation was humiliatingly withdrawn. It had wide publicity. Its irresponsible making reflected no credit on Mr Packer, and revealed he was prepared to say anything to denigrate my Commission. I expect this caused further loss of reputation.

3.019 I make each of these points to emphasise that these problems were all of Mr Packer's own making, not mine. By taking such action, and conducting it in such a manner, he merely drew greater attention to his difficulties with me. I had not sought to do this, and played no part in it other than that insisted upon by Mr Packer or his legal advisers.

3.020 The Federal Court proceedings were unsuccessful and as a result, arrangements were made for his appearance before me. They had, however, one adverse result. By bringing them Mr Packer had imposed substantial delay on my enquiries preventing me from calling him prior to Christmas 1983. In the result, I was compelled to call him in February 1984. At this time the Federal Government, being concerned to establish the Crime Authority, had imposed time limitations on the completion of these enquiries. By the terms of a letter I wrote at about this

time, it will be seen that I was worried that this would preclude the proper completion of my enquiries into Mr Packer. The delay was entirely attributable to Mr Packer's action in the Federal Court.

3. Public Examination of Mr Packer

3.021 The public examination of Mr Packer took place at Hawthorn, Melbourne. He was represented. Again, being sensitive to damage that may have been occasioned to his reputation by matters being put whilst their development was still in its infancy, most of the examination of Mr Packer was done privately. The only part done publicly was that relating to the cash payments of which his associates had spoken the previous year. All other matters, including a drug matter, were done in private. Mr Packer and his legal advisers made no objection to this course being followed. There was no legitimate objection.

3.022 In his statement Mr Packer complains of the suffering of his family arising "for nearly a year". I have little doubt that the explanations he gave in the public sittings did allow speculation to arise in the public's mind as to their truthfulness. The explanations were extraordinary, and defied rational belief. But those explanations were his own. They were not put by leading questions or suggestion. Indeed, he was handled in a most gentle manner, and merely asked to say what he wished about various matters. The failure to advance acceptable explanations was entirely due to their lack and in no way attributable to the manner in which the proceedings were conducted.

4. Subsequent Private Hearings

3.023 Immediately after Mr Packer's examination, I conducted private examinations of his lawyers concerning the removal of a file from their offices to Singapore and Hong Kong. Mr Packer, of course, is fully aware of what took place in those hearings. I report upon them in Volume 9. As I have said in that volume, I conclude that the removal of the file was deliberate, and was for the purpose of frustrating my enquiries and was at the specific instructions of Mr Packer. Thus I was dealing with a person (Mr Packer) who, in my concluded view, was seeking to frustrate the enquiries. I drew the further conclusion that he may take steps in further enquiries to frustrate those as well. Naturally I determined to inhibit his ability to do so.

3.024 The enquiries into Packer-related matters quickly expanded, taking into their breadth a number of complex land transactions, and the death of Mr Coote. These, and other matters, are reported upon in detail in Volumes 9, 10 and 11. A perusal of those matters quickly reveals their great ambit. Any one of them warrants a major inquiry. None of them has been finally completed. All require further investigation. Upon completion I expect there to be proceedings in the Courts for some or all of the persons involved.

3.025 Mr Packer, through his lawyers, often sought leave to attend at the hearings during which witnesses were examined about these matters. He was consistently refused by me. Many of the matters were sensitive, with witnesses either exhibiting fear, or expressing fear that their evidence may become known. Any person with experience in the conduct of such investigations well knows that persuading witnesses to give evidence in the presence of

those who may be affected adversely is extremely difficult. The presence of Mr Packer or his associates would have led to extraordinary difficulties in the successful pursuit of my enquiries. This is quite apart from the conclusion I reached that I had good reason to fear he would seek to impede my progress by the removal of documents and so on.

3.026 I fell ill immediately after Easter 1984, and was hospitalised. I remained in hospital until the beginning of June. My investigatory function came to an end on 30 June 1984. Thus the number of witnesses examined during this time was, in any event, minimal. They would have been fewer still had Mr Packer been present, and if he had the opportunity to slow down the proceedings further by extensive cross-examination and submissions. Most of the investigatory work consisted of the systematic examination of vast numbers of documents relating to Packer which various witnesses had produced.

3.027 Mr Packer has drawn the analogy with the common burglar, and sought the same rights as he receives. The police investigate burglaries without there being present the suspected thief or his lawyers. They question witnesses and gather evidence free of such monitoring. They may seek some explanation from the suspect, and, at that time only, he may have present his lawyer. Mr Packer received precisely the same rights; he was treated in the same fashion as the common burglar. By seeking to be present during the investigation, he sought greater rights. I refused them. He is in no different position to anyone else in the community, at least so far as I am concerned.

5. Summaries of Relevant Criminal Activities

3.028 The catalyst for Mr Packer's complaint was the revelation in the National Times that he had been the subject of a summary of criminal activity prepared by me for

transmission ultimately to the Crime Authority. As I understand the complaint, he suggests that before he was included in such a summary, there should have been a hearing at which the matters were put to him, that I should have listened to submissions, and ruled upon the matter in the same fashion as a court of law. It is difficult to believe that any rational person would suggest such a course; but, since he proclaims it so loudly, it is desirable that I deal with it.

3.029 It is to be born in mind that Mr Packer is no different in this regard from anyone else. His argument must mean that every person the subject of the 42 summaries should first have been given a hearing. There are vast numbers of people involved. The process would have taken many months - time which was not available. Still, if that is a correct appreciation of the law, then the lack of time is a matter of no moment. If there is insufficient time, the summaries would not be submitted, and that would be the end of the matter.

3.030 The proclamation of the National Crime Authority Act in June 1984 allowed the Government to proceed with its plan to put the Authority in place of my Commission so that the work of my Commission could continue once I had finished. Accordingly, towards the end of June the Prime Minister requested that I prepare the material for the Crime Authority to take over "the investigations".

3.031 I have analysed the National Crime Authority Act in the chapter dealing with the transition. I will not repeat it all here. It is sufficient to note that under its provisions, and under the provisions of the Royal Commissions Act, I could pass material to the Crime Authority only if it was conducting an investigation into matters to which the material related. In July the Crime

Authority was conducting no investigations. It had to find a starting point. Nor could I properly permit it to look at my investigations, for transmission of information was specifically regulated by the statutory provisions. There had to be compliance with those provisions; and they required the Authority to be conducting an investigation before transmission occurred.

3.032 The answer to the impasse lay in me advising the Attorney-General of the nature of the investigations, and he referring those investigations to the Authority. It would then be able to consider whether it should conduct an investigation into those matters. Once it decided to do so, I was entitled to transmit information to it.

3.033 The Crime Authority is not entitled to conduct any investigation it likes. It must fall within the criteria provided by its Act. Yet only my staff and I knew sufficient of the investigations to say whether the criteria were satisfied - or at least to advance arguments explaining why they were satisfied. Accordingly, on receipt of the Prime Minister's request, my staff prepared, and I accepted, the summaries of relevant criminal activities prepared in the terms of the criteria of the Act.

3.034 Thus, in the drafting of those summaries, the language of the National Crime Authority Act was employed. It was not language of my choosing. This is important to appreciate. The Act speaks of there being "allegations" or "suspicions" that relevant criminal activities have taken place or are taking place. That is the issue addressed by the summaries; not conclusions that they have occurred.

3.035 Being satisfied by mere allegation or suspicion, the summaries encompass all possible enquiries on which I hold material. It will be appreciated that investigations may be at varying stages. Some may be just arising, where there is no more than a vague suspicion. Others may be well advanced, and may be approaching a stage where firm allegations by way of criminal charges may be made. The summaries encompass matters which are at differing stages, and this applies as much to the Packer-related matters as it does to others. Therefore it is wrong to assume, as Mr Packer has done, that the summaries reflect final conclusions. They do not.

3.036 The summaries were forwarded to the Crime Authority because they related to matters which need further investigation by it. Not all matters were sent there. A vast number have been sent to various law enforcement agencies over the past four years. These are the more advanced matters. Many never grace a formal report such as this. A number of the matters in the summaries will not be found in this report. This is because there is no purpose in reporting upon them. There is no change of law required, nor any special administrative measures. Thus it is an error to believe that merely because matters are found in the summaries, I have reached conclusions and am reporting upon them. I am reporting on a number of the Packer-related matters, but by no means all of them.

3.037 Since the matters being transferred to the Crime Authority require further investigation, it would be inimical to the success of the investigation if the subject of it was warned, and told what was known. There is no principle of natural justice which requires such warning. Indeed, the High Court has determined the matter in the contrary fashion, as appears in the previous chapter. Mr Packer has no proper cause for complaint that he was not

allowed to argue against referral. Quite apart from disclosing the investigator's hand, plainly there would be nothing he could say which would prevent a referral taking place.

3.038 It is wrong and unjust that the summaries of relevant criminal activities should be published in the newspapers as if they were concluded opinions of the subjects of the investigations. As I have explained, that was not sought by me, nor approved. It having occurred, it raises in sharp contrast a major difficulty in the operation of the Crime Authority. Such summaries are to be submitted to the Inter-Governmental Committee. This will mean their distribution to eight Governments, and their law enforcement agencies. Despite the precautions taken, my summaries found their way to the Press with only one Government involved. It seems inevitable that such a system will not be able to impose certain security on the transmission of such matters. This may well be a serious obstacle to the effective operations of the Crime Authority.

3.039 Thus I reject Mr Packer's complaint that he was not given a hearing prior to the summaries being prepared and delivered. The second aspect of this part of his complaint was that I failed to do anything about the publication although I did act in respect of another publication coded "Flesh". The omission, says Mr Packer, constitutes an endorsement of the publication of Goanna.

3.040 It is a pity that before making such an observation Mr Packer did not take the time to read the reasons I advanced for making the order in respect of "Flesh". I will set those reasons out in this chapter shortly. Before doing so, however, it is necessary to provide some account of the events.

3.041 As soon as the material was published in the National Times, discussion took place as to what could be done in law. The summaries, technically, were no longer mine but belonged to the Attorney-General and the Crime Authority. I was merely the source. Their publication did not affect my future investigations but theirs. After all, by delivery of the summaries I was disposing of much of those investigations.

3.042 In these circumstances, I was heavily circumscribed in my powers. A close examination of the Royal Commissions Act revealed that there were only certain circumstances permitting an order prohibiting publication. As I explained in my ruling, had my powers been wider, I would have prohibited all of them. But my powers were not of that width. I was supported in this view by the opinion of the Solicitor-General. I exercised my powers to the full, which was merely in respect of one matter, "Flesh". My reasons were:

In early July this year at the request of the Prime Minister I had put together a number of summaries of investigations which were the concern of my Commission. Part of the task was to ascertain those investigations which met the criteria of the National Crime Authority Act. Their number was originally 40 but was shortly increased to 42.

It was not possible under the Royal Commissions Act, in particular Section 6P(2A), to communicate information or furnish evidence, documents or things to the National Crime Authority until such time as that Authority was conducting an appropriate investigation. I sought the assistance of the Commonwealth Attorney-General who in turn obtained the opinion of Sir Maurice Byers Q.C., the immediate past Solicitor-General. Sir Maurice advised that I could refer these 42 summaries to the Attorney-General who could, if he wished, pass them on to the National Crime Authority.

I did so. The Attorney referred them to the National Crime Authority.

Thus there came into existence and into the hands of the National Crime Authority a document which has been constantly and inaccurately referred to as "the 42 References". They were not references; they were summaries for the assistance and consideration of the National Crime Authority. So they have been treated by it and by me.

I have set out this history briefly so that the action I propose to take can be understood.

Last Friday the National Times Newspaper published what it said were extracts, with alterations, of some of those 42 summaries. More are promised in succeeding weeks.

Let me say at the outset that no concession is made that the National Times does have a true copy of the document. If it does have such copy then it was obtained surreptitiously, without authority, and probably illegally. I do not know what material it has or how it got it.

If the National Times does have a copy of the document and proposes to publish its contents, it is a matter of concern to me. It can only harm the successful outcome of the investigations.

I have given consideration to whether I am empowered to prohibit further disclosure. I have sought and received advice from the Attorney-General, the Solicitor-General and the Australian Government Solicitor.

If I was satisfied that I had the power to do so, I would direct that no publication of the matter contained in the document be permitted. The only possible power is that found in Section 6D of the Royal Commissions Act. Sub-section 3 of that Section reads as follows:

(3) The Commission may direct that -

- (a) any evidence given before it;
- (b) the contents of any document, or a description of any thing, produced before, or delivered to, the Commission; or
- (c) any information that might enable a person who has given evidence before the Commission to be identified,

shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

The power can be exercised only in the circumstances there prescribed. A power to prevent publication of material is an interference with the freedom of speech. It should be construed strictly.

I have considered whether the 42 summaries or any of them fall within the provisions of Section 6D. I find only one such summary. It is that numbered 0008 and bearing the coded title "Flesh". For that summary to be made public would be a serious detriment to continued investigation and may result in physical harm to a person or persons. It falls within Section 6D.

My restrictive interpretation of the power given by Section 6D has been supported by advice given by the Solicitor-General, who, I understand, sees difficulties in a wider interpretation.

The Editor of the National Times was yesterday afternoon advised by the Solicitor for the Commission that I proposed to prohibit publication today.

If the National Times is in possession of a copy of the whole document, I trust it will bear in mind that there are occasions when the public interest is not well served by publication of material which should remain confidential, as was intended.

For these reasons I give the following direction:

"Pursuant to Section 6D of the Royal Commissions Act 1902 I direct that the contents of the part of the document described above, being that part identified by the number 0008 and code name "Flesh" not be published."

3.043 The National Crime Authority, which was also very concerned, had its own powers. In the opinion of the Solicitor-General, it could have issued a wide order prohibiting publication of all of the material. But the Commissioners took a different view. They concluded that the power to prohibit related only to matters adduced at hearings of the Authority, and despite the Solicitor-General's view to the contrary, they took the narrower view and decided they did not have power to make such an order. They pressed for an injunction to be sought by the Attorney-General. As I understand it, he took the view that if they would not make the order, he should not seek an injunction.

3.044 I mention these matters to disclose the serious consideration that was given to the matter at a time when Mr Packer claims I was giving "implicit endorsement" of the publication. Nothing could have been further from the truth. As for public disassociation, which Mr Packer also suggests I should have done, this was a difficult question; in my considered view the best I could do consistent with honesty was neither to affirm nor deny the accuracy of the publication. It is to be remembered that at that time there

was nothing in the publication which identified any individual, and particularly, nothing which identified Mr Packer. I took no step which would allow the verification of the source, nor the identification of the person involved. In the end, it was Mr Packer who made the public admission, just as it was he who previously disclosed the nature of my investigations into him.

3.045 To suggest, in these circumstances, that I am acting in a fashion similar to Senator Joseph McCarthy (now deceased) of the United States is patently ridiculous. At no time have I publicised Mr Packer's name, or suggested that he be dealt with by public denigration in preference to the ordinary course of the law. I still do not do so. To the extent that he warrants investigation, I recommend it be done; to the extent he warrants prosecution, I urge that it be done.

6. Final Report

3.046 The last matter requiring consideration is his complaint that I am writing a final report which he anticipates will deal harshly with him, and that I have not proffered him any opportunity to explain matters away. This position is the closest analogy to that dealt with by the Salmon Royal Commission Report.

3.047 There are many different types of Royal Commissions. Some are requested to investigate calamities and provide a report detailing publicly those responsible. Other Commissions are not expected to go so far. There have been many Royal Commissions in Australia where criminal matters have been investigated. The Commission is not expected, nor empowered, to ascertain the guilt or innocence, but rather to determine who should be prosecuted and how. There are often ancillary duties whereby the

nature of the criminal operations is publicised so that the community is better informed. In the past, in the discharge of this function, Commissions have often given detailed accounts of many criminals, or persons suspected of being criminals. It is rare, in Australia, for more than a few to be represented before the Commission and to make submissions on those so identified, although it does happen.

3.048 In the course of my Commission I have frequently identified people suspected of criminal activity. Their names and details of their activities have been despatched to police forces and they have been prosecuted. They have received natural justice by the provision of committal proceedings and by the operations of the criminal courts. That is sufficient.

3.049 There have been occasions when I have reported upon major criminal activities. My fifth report was one such report. The offenders have been committed for trial. They know full details of the charges and the evidence. This was achieved by the ordinary processes of the criminal law. I did not seek to discharge that task myself.

3.050 In my current report I deal with many individuals. None of them have received the rights that Mr Packer seeks for himself. It would be a task of impossible length. Most of them are presently committed for trial, or awaiting committal, having been charged. They will receive justice at that point. They are included in the various chapters of this report as an account of their activities is necessary to sustain my various recommendations.

3.051 Matters touching upon Mr Packer occur in three principal volumes, and to a lesser degree in some chapters in other volumes. In one volume my recommendation is that there be a further murder investigation followed by an

Inquest. Mr Packer may attend that if he wishes, and he will there learn all he wishes to know. In another volume I recommend the matter being placed in the hands of the Director of Public Prosecutions. Should he decide to take civil or criminal proceedings, and should they involve Mr Packer, he will receive his full measure of rights. The remainder are subject to recommendations that there be investigations conducted by certain law enforcement agencies. Should these result in civil or criminal proceedings, again he will receive his full rights. At no point have I recommended that his liberty be restricted, that his property be forfeited, that his name be publicly denigrated. Nor have I recommended that these volumes be published, other than by transmission to the Governments concerned.

3.052 In these circumstances, I do not believe the Salmon rules are appropriate for the circumstances affecting Mr Packer. In truth, he seeks more rights than those to which the ordinary citizen is entitled, and I see no reason why his request should be granted. He has not been denied any basic civil liberties, and I see no reason to suppose he will be denied them in the future.

CHAPTER 4 - ADMINISTRATION OF THE COMMISSION

'The horror of that moment,' the King went on, 'I shall never, never forget!'
'You will, though,' the Queen said, 'if you don't make a memorandum of it.'

(Lewis Carroll, Through the Looking-Glass)

4.001 There is a popular picture of the Australian Public Service, or any Public Service for that matter, being bogged down by paperwork. There are applications to be made, forms to be completed, letters to be written, submissions to be prepared, decisions to be communicated. And there are the ubiquitous memoranda.

4.002 All of this is daunting to the public generally and no less so to a new Royal Commissioner unfamiliar with the ways of the Public Service. Within a finite, and usually short, time limit in which to report there is not room for a Commissioner to attend both to the subject matter of his inquiry and to the myriad of Public Service requirements which need to be processed to establish proper financial, personnel, administrative and operational management. For him to try to do so will result in neither being done properly.

4.003 The Commonwealth Letters Patent which appointed me Commissioner on 1 October 1980 required me to present an interim report on the results of my inquiry not later than 31 March 1981 and to present a further report on the results of my inquiry, with my recommendations, not later than 30 September 1981.

Administration of the Commission

4.004 To achieve such a requirement one must, as I did, rely heavily on two things: first, a Commission Secretary of the highest order, and secondly the establishment and maintenance of good working relationships with the Department of State which is responsible for the servicing of Royal Commissions.

4.005 The importance of a capable and efficient Secretary cannot be overstated. Not only is he responsible for the overall management of the Commission but he is in many respects the linch-pin of the organisation, both internally and with the Public Service generally. Ideally he should be a public servant of some years' standing, should be drawn from what is now the Senior Executive Service, should have a sound background in both management and policy advising (though not necessarily related to the subject area of the Commission), and should be able to bring to a Commission a high degree of Public Service professionalism. I was fortunate to have the services of such a person in Mr G. Hutton. He commenced with the Commission on 31 October 1980 and remained with it until 3 August 1984 when he resigned from the Public Service.

4.006 Under the Administrative Arrangements Order the responsibility for the servicing of Royal Commissions is given to the Department of the Special Minister of State (SMOS). Prior to that Department's creation in March 1983 responsibility rested with the Department of Administrative Services (DAS). There is within SMOS, and DAS before it, an expertise which has been acquired over some years of servicing of Inquiries. More importantly, SMOS is the conduit between the Commission and the Government, including the Public Service generally: and recognition of that conduit is a critical factor for the overall successful administration of any Inquiry.

4.007 Therefore it is essential to have a very close working relationship with the servicing Department. For my Commission that was made a little difficult because of its geographic isolation from the SMOS Central Office. But there were regular visits to Melbourne by SMOS (and DAS) officers and by Commission staff to Canberra. And there was almost daily telephone contact between the two. That close contact is essential: otherwise there is a danger of an Inquiry drifting too far from the machinery of government of which it is, necessarily, a part, though an independant part.

4.008 A capable Secretary and close relations with the servicing Department, coupled with the expertise which resides in that Department, removed from my shoulders the worry of my negotiating the labyrinthine Public Service processes. Nevertheless those various processes have to be observed and involve the kind of paperwork I referred to at the start of this chapter. I should like to pay tribute to the Canberra Central Office of SMOS, and before it DAS, for the way in which they have handled, with sympathy and speed, the very many requests which the Commission has placed before them over the years.

4.009 From 1980 to 1983 the location of the Commission in Melbourne did not present major servicing difficulties because DAS, then the servicing Department, has regional offices in each State and meeting the Commission's needs was mainly a matter of central office/regional office liaison. When the servicing responsibility passed to SMOS (which does not have regional offices) it was decided to continue the past arrangements of DAS in Melbourne providing personnel and financial services under delegation from SMOS. Because that provides a drain on DAS resources and because of the difficulties of maintaining proper channels of responsibility I can understand why that arrangement is to be phased out progressively on cessation of my

Commission. I should like to place on record, however, my appreciation to the officers of DAS in Melbourne for the services they have provided over the years.

4.010 The Commission was also assisted by other Commonwealth agencies, notably the Commonwealth Court Reporting Service. Officers from that Service attended and transcribed all 447 hearings I held in all States and in the Australian Capital Territory involving 1054 witnesses and 20260 pages of transcript. I am particularly grateful for the services they provided so willingly and cheerfully.

4.011 Officers of the Department of Housing and Construction and the DAS Property Division have also provided assistance, especially in the relocation of the Commission to its present premises - a move which was undertaken only on the specific understanding between the Prime Minister and me that the new premises, involving as they did a substantial outlay in fit-out costs, would ultimately be taken over by the (then proposed) National Crimes Commission. That has been the case.

Staffing

4.012 At the commencement of my Commission on 1 October 1980 the staff comprised Ms M Newport, interim Secretary, Mr D. Meagher (now of Queen's Counsel), Mr R. Wild of the Melbourne Bar, Mr J. Buxton an officer seconded from the Attorney-General's Department, and a handful of support staff. It soon became apparent that a second legally qualified officer was needed and in November 1980 Mr B. Harkin of the then Deputy Crown Solicitor's Office in Victoria took up duty with the Commission. As I have mentioned Mr G. Hutton commenced as Secretary to the Commission on 31 October 1980.

4.013 In those early months, and especially given the need for an interim report by 31 March 1981, the workload of the Commission was enormous. By January of that year, only four months after I had commenced, the staff numbered 31 - much greater, I believe, than many Inquiries now reach during their lifetime. It was indicative, however, of the resources which ultimately would be needed to make investigative inroads into the type of criminal activities which, even at that time, had come to light.

4.014 By a process of evolution, especially involving the development of analytical techniques described elsewhere in the Report, the staff of the Commission grew to a peak of 103 in July 1984. The investigation of links between painters and dockers and the tax avoidance industry, which occupied the Commission during the second half of 1982, added greatly to an already heavy workload. In October 1982 the staff numbered 64 and in the following month two more legally qualified advisers were engaged.

4.015 Towards the end of 1982, in the context of the dovetailing of my organisation with the then Government's proposed National Crimes Commission, the size and structure of the organisation was reviewed and a proposal put to DAS in January 1983. The main features were the formation of a cell of Collators, the expansion of the Analysts cell and an upgrading of the ADP area. In May 1983, Mr L. Lasry of the Melbourne Bar was appointed as an additional counsel to assist me.

4.016 Broadly, that is the organisation which existed at the end of my Commission. As at 1 September 1984 it numbered 102 people who, by general categorisation, were broken into:

Administration of the Commission

40 Operations (including 5 qualified
legal officers)
32 ADP
16 Registry
10 Administration

plus, of course, the Commission Secretary, three counsel assisting and officers seconded from other agencies.

4.017 It must be said that the staff of the Commission, both present and past, whether permanent public servants or temporary, have provided that dedication, application, support, assistance, knowledge and professionalism which is demanded of public servants in this country. Without staff of that calibre my task would have been almost impossible.

4.018 I should mention that throughout my Commission many temporary staff were engaged, mainly because permanent public servants are simply not available for long-term release from their home departments. This is a difficult task for administrators who are trying to meet the pressing demands of an Inquiry constrained by tight deadlines. Often little is known of a person's background; there may be few, if any, references; judgements about suitability must often be made on first impressions; and problems abound in quickly assimilating a large number of people from diverse backgrounds into a public service working environment. Apart from a few instances, however, the people who have worked in the Commission over the years - both permanent public servants and temporary staff - have welded themselves into a team which has provided me with unqualified support in the discharge of my task. In itself that is tribute to the Administration of the Commission, particularly in recent times when staff concerns about their prospective movement to the National Crime Authority gave rise to a certain degree of industrial unrest.

Accommodation

4.019 My Commission commenced its operations at premises at 140 Bourke Street - above a picture theatre! It soon became clear, however, that the number of staff would very quickly outgrow that office space and in March 1981 the Commission moved to premises at 636 St Kilda Road. Because of the nature of matters under investigation it was necessary to provide an appropriate level of security for both staff and documents on the premises.

4.020 Lack of office space again became a pressing problem in 1983 and an additional half floor was leased at St. Kilda in May of that year. However, considerably more space was required; but clearly another move would only be economical if in the long term the premises so acquired or leased could be internally structured and secured to enable the then proposed National Crimes Commission to take over the premises on cessation of my Commission. It was with that in mind, and on a clear understanding of such with the Prime Minister, that the Commission moved to its present premises. That move took place in November 1983 although it was a further six months before the fit-out work on the Commission's entire premises was completed.

4.021 Therefore it is worth mentioning that the overall cost of the Commission in 1983-84 contains this item of extraordinary expenditure. It is a cost which the taxpayer will not have to bear in the establishment of the National Crime Authority (apart from whatever modifications to the premises it needs to make itself).

4.022 Similarly, all furniture, fittings and other assets will be passed from my Commission to the NCA at no cost to the Authority. Principal amongst these is the hardware of the extensive computer installations which have

been acquired over time. In the normal course the Department of the Special Minister of State - which has had to justify those acquisitions to both the Government and the Parliament - would have expected their return so that they could be re-allocated to new Inquiries as they arise and so lessen the costs of those Inquiries. That will not now be the case and I expect that SMOS will in future need to seek funds for comparable equipment as each new Inquiry is established.

Finance

4.023 Expenditure on the Commission amounted to \$1,153,343 in 1980-81, \$2,358,130 in 1981-82, \$2,963,805 in 1982-83 and \$5,956,723 in 1983-84; the last amount includes, as I have indicated, an extraordinary item of \$940,860 being expenditure incurred in the fit-out of the Commission's current premises. An amount of \$1,468,000 is included in the appropriations for 1984-85. Further details of each year's expenditure are set out in Annex 1.

4.024 Some people have sought to compare the identifiable costs of the Commission with a notional concept of benefits obtained. It is specious to do so. Is it possible to quantify the gain to Revenue from disclosure of the bottom-of-the-harbour tax avoidance scheme? Is it possible to measure in money terms the benefit which might accrue from the 600 prosecutions which the Special Prosecutor Mr Redlich says he has launched as a result of my investigations? Much of the benefit lies merely in the disclosure of criminal organisations and their activities: and that is a benefit to society as a whole which cannot be quantified.

4.025 With the exception of salary costs and items met by Departments other than SMOS (such as property costs) the Commission has operated under a one-line vote. Officers of the Commission do not exercise any financial delegations and there are arrangements between the Commission, SMOS and DAS Melbourne for payment of accounts.

4.026 There has also been consultation between SMOS and the Commission about forward estimates and much reliance has been placed upon SMOS to negotiate the Commission's budgetary needs throughout each financial year with the Department of Finance.

4.027 It is in the nature of any Royal Commission that many of its expenditures are not entirely predictable. For example, it was necessary for me to hold 150 hearings interstate and staff of the Commission and seconded officers undertook many interstate visits for the purposes of investigations. Each visit is a costly exercise and the expenditure cannot be foreseen with accuracy.

4.028 It does appear, however, that improvements could be made in three areas. Firstly, a Commission Secretary should be equipped with an appropriate financial information and management plan. Despite the sophisticated computer facilities at my Commission's disposal it was not until the closing months of my Commission that an internal financial information plan was developed. I understand that most new Inquiries are provided with some form of personal computer capacity and it would seem to be a relatively easy task to provide each with a financial management plan package, whether it is developed in-house or is commercially available.

Administration of the Commission

4.029 Secondly, ideally Commission Secretaries should have some knowledge of financial management and particularly government financing. I recognise, however, that this cannot always be achieved and in that case it is essential to have on a Commission's staff someone drawn from the finance area of a Department who has a sound background in government financing. This is particularly important once the staff size of a Commission reaches more than, say, 25.

4.030 Thirdly, and as something of an overlay, SMOS should continue to develop, whether on personal computer or mainframe, its own estimates and financial information and management plans for all Inquiries. In the final analysis it is that Department which must negotiate with the Department of Finance, and its Minister with Government, for scarce money resources and it is inhibited in doing so by not having a detailed financial information system for each Inquiry it services.

Overseas Visits

4.031 During the course of my Commission the need arose on three occasions for me to travel overseas to pursue my inquiries. The dates and reasons for these visits and the personnel who accompanied me are listed below. During each of these visits I took the opportunity to discuss with members of governments and senior officers of regulatory agencies a number of broad issues pertinent to the conduct of my inquiries, and to the recommendations for legal and administrative action that I have made.

Hong Kong (22-29 May, 1982)

Documents received from Ward Knight and Dunn Pty Ltd revealed connections between that company and Hong Kong banks, companies and individuals. Accompanied by Messrs

Hutton, Meagher and Buxton, and the Victorian Chief Commissioner of Police, Mr S.I. Miller, I travelled to Hong Kong to consult with Hong Kong Government authorities, notably the Independent Commission Against Corruption.

Singapore (30 November - 5 December 1982)

Investigation of the Hamidan scheme indicated significant financial movements between Australia and Singapore and Hong Kong. I travelled to Singapore, accompanied by Messrs Hutton, Wild and Harkin and Chief Inspector Green of the Victoria Police, to gain access to records that would further my inquiries. I returned direct to Perth for a hearing connected with the purpose of my visit. Messrs Wild and Harkin also travelled to Hong Kong in the course of this visit. They returned to Australia on 6 December.

Singapore and Hong Kong (26 - 31 October 1983)

On this visit I was accompanied by Messrs Hutton, Lasry and McDonnell of my office, and Chief Inspector Green of the Victoria Police. The purpose of the visit was to conduct interviews and to access documents relating to certain Singapore and Hong Kong companies and to liaise with relevant Singapore authorities. In the course of the visit it became desirable to investigate certain matters in Hong Kong. Accordingly, three members of the party returned to Australia via Hong Kong. Mr Hutton and I returned direct to Australia from Singapore.

Other Administrative Matters

4.032 At Annex 2 are statistics of the hearings I have conducted, witnesses heard, exhibits presented, and transcript. Details of witnesses, their legal representatives and exhibits are contained in Appendices 1-A, 1-B and 1-C, respectively, for public hearings, and in Appendices 1-D, 1-E and 1-F, respectively, for confidential hearings.

Administration of the Commission

4.033 At Annex 3 is a list of reports I have presented to government, and other publications.

Administration of the Commission

EXPENDITURE

ITEM	APPROPRIATION				
	1980-81	1981-82	1982-83	1983-84	1984-85(a)
Commissioner's					
Fees and Expenses	195,615	377,782	388,149	374,398	129,000
Staff Expenses	30,356	61,254	135,545	85,085	7,000
Office Expenses	292,239	686,264	708,773	1,665,458	508,000
Consultants	2,825	4,481	3,235	-	-
Witness' Expenses	4,277	9,402	15,587	24,907	2,000
Instructing Solicitors	7,869	25,709	38,992	-	-
Counsel Fees and Expenses	146,579	360,253	481,936	755,008	221,000
Union Counsel	127,357	50,716	103,563	95,123	1,000
Salaries & Allowances	292,970	681,866	981,252	1,335,925	480,000
Overtime	-	-	-	41,791	5,000
Property Costs	33,738	70,499	106,420	1,480,676	115,000
Furniture	19,518	29,904	353	98,352	-
TOTAL	\$1,153,343	\$2,358,130	\$2,963,805	\$5,956,723	\$1,468,000

(a) Subject to revision on expiration of the Commission.

STATISTICS OF HEARINGS, TRANSCRIPT, WITNESSES & EXHIBITSAS AT 12 OCTOBER 1984

PUBLIC HEARINGS:	<u>169</u>
CONFIDENTIAL HEARINGS:	<u>278</u>
NUMBER OF TRANSCRIPT PAGES:	<u>20,260</u>
NUMBER OF WITNESSES:	<u>1,054</u>

Details of Hearings

<u>VICTORIA</u>	Public Hearings	101
	Confidential Hearings	190
<u>NEW SOUTH WALES</u>	Public Hearings	31
	Confidential Hearings	38
<u>QUEENSLAND</u>	Public Hearings	17
	Confidential Hearings	18
<u>SOUTH AUSTRALIA</u>	Public Hearings	8
	Confidential Hearings	3
<u>WESTERN AUSTRALIA</u>	Public Hearings	10
	Confidential Hearings	24
<u>AUSTRALIAN CAPITAL TERRITORY</u>		
	Public Hearings	0
	Confidential Hearings	4
<u>TASMANIA</u>	Public Hearings	2
	Confidential Hearings	1

TOTAL PUBLIC HEARINGS	-	169
TOTAL CONFIDENTIAL HEARINGS	-	<u>278</u>
TOTAL HEARINGS		447

REPORTS AND OTHER PUBLICATIONSInterim Reports

- Interim Report No 1 On the membership, control and criminal
(Delivered on 30 background of the Union and its members.
March 1981) (Confidential)
- Interim Report No 2 On Macbell Minerals, SP Bookmaking,
(29 July 1981) Unemployment Fraud and the use of false
names by Union members.
(Confidential)
- Interim Report No 3 On recommended changes to the law
(18 December 1981) regarding access to taxation records.
(AGPS Canberra, 1982)
- Interim Report No 4 Vol 1. On taxation fraud and
(27 July 1982) criminality within the Union.
(AGPS Canberra, 1982)
Vol 2. On organised crime and its
suppression.
(Confidential, with the exception of an
edited version of Chapter 10, which was
presented to the Senate on 7 September
1982)
Vol 3. On the activities of a number
of Commission targets.
(Confidential)
- Interim Report No 5 Vol 1. Discussion of the Crime
(25 July 1983) Commission proposal. Outline of Report.
(AGPS Canberra, 1983)
Vol 2. An abridgement of Volume 3.
(Confidential)
Vol 3. On the Hamidan fraud.
(Confidential)

Other publications

- Research Staff: Discussion Paper: Media Bias and the
Victorian Branch, AGPS Canberra, 1982
- D.R. Meagher. Organised Crime, AGPS Canberra, 1983

CHAPTER 5 - OPERATIONAL OVERVIEW

INTRODUCTION

5.001 The purpose of this chapter is to give a general picture of the scope of the operations of my Commission over its four year life. It demonstrates how "one thing leads to another". It is not intended to be a logistical analysis specifying the number of days in hearings, documents tendered and the like. Those details can be obtained elsewhere in this Report. Nor will it be concerned with the investigatory techniques developed during the course of the Commission. Those are the subject of comprehensive discussion in Volume 2. At the commencement of my term there was a choice of about twenty areas from which to select subjects for intensive investigation. With hindsight, it is apparent that some of them would have led the Commission to the same point. But at the time they appeared very different.

5.002 By my appointment, I was directed to enquire whether the Union or any officer or member (or person purporting to be a member) or their associates has engaged in illegal activities. It became a primary task of the Commission to ascertain the identity of those persons. In earlier Reports I had set out the manner in which that task was to be accomplished. It was a task that required considerable application of time, resources and analytical techniques.

5.003 I found quickly that many of the Union members had assumed names; in some cases they were of deceased Union members. Thus although I received evidence that there were some 1600-1700 members of the Union as at October 1980, an

examination of the records of the branches revealed many more names on the register. My preliminary analyses showed in excess of 2,200 men in the branch records and a separate examination of employment records showed 2,093 names - although many of the names in the two separate listings were not common. It followed that the task of identifying those in respect of whom I was enquiring was difficult and time-consuming. I am quite certain that I have not identified all the members of the Union. To do so would have been quite impossible. Nevertheless, it has been necessary to remain aware of the task, critical as it is to my terms of reference. It followed that some allocation of resources has had to be set aside on a semi-permanent basis on this issue.

5.004 My earliest operational target was the Williamstown Naval Dockyard. I was anxious to become as well-informed as possible about the employment of painters and dockers at that establishment. I found many matters to be critical of, and I set out some of those criticisms, in my first Interim Report. I have since received in evidence assurances from the present management of the Dockyard (as at mid-1983, in any event) that those problems have now to a large extent disappeared and the relevant procedures have been streamlined. For that reason I have made no further recommendations in respect of the methods of employment of Union members at Williamstown.

5.005 By the time of the first Interim Report I had obtained a glimpse of the work confronting me. I said in March 1981:-

"It is clear that the task imposed on me is far more formidable (and probably far more significant) than was initially realized."

(Interim Report No. 1, p. 10)

What I was shortly to become aware of was the strength of organised crime throughout the country and the manner in which its participants interlocked and inter-reacted at every level.

5.006 By July 1981, when I submitted my second Interim Report, the magnitude of the task facing me and my staff had been reinforced. By then I had little doubt of a "large criminal organisation" availing itself of the Union for the supply of labour for its criminal activities. I anticipated there might be more than one such organisation and my next task was to identify the organisation(s). I had until then concentrated my operations in Victoria. It was likely there would be other such criminal organisations - that is, those utilising the "services" of the Union or its members - in other States. I said in my Report:-

"If there are similar criminal organisations at work in other States then the work of this Commission will take a very long time. It will become akin to a Crime Commission and less a Royal Commission investigating one particular Union."

(Interim Report No.2, p. 8)

5.007 It is trite comment, but the work of my Commission has taken a "very long time" and has, according to ministerial statements and public and media opinion, become "akin to a Crime Commission". This was not something that I consciously set out to achieve. It happened because of the connections and associations which were discovered as I probed beneath the surface. I was astonished, and have continued to be so over the years, by the intricacy of the pattern of connections by which members of the criminal underworld operate in this country. Moreover, the manner in which the traditional blue collar criminal has become

associated with the white collar criminals has given great impetus to my investigations. It was because of the use by "executive" criminals of the Union services that I was able to investigate criminal activities of a kind far more sophisticated than those in which the lower level members of the "organisation" would normally become involved.

5.008 I was determined I should not waste money and resources on an investigation into street level crime which could adequately be dealt with by police forces. I was told repeatedly by police officers with whom I came into regular contact that they could only police at "ankle" or "shin" level; they rarely got to the "knee" level. Clearly enough, this meant they investigated, arrested and prosecuted (as a general rule) the underlings. My aim was to concern myself with major targets - albeit ones in respect of whom my interest was justified by my terms of reference.

5.009 Thus, by way of example, when substantial social security frauds were uncovered by Australian Federal Police - operating with the assistance of my Commission - I encouraged the continuing investigation of those frauds but did not supervise it. The employment and union records obtained by me, and the computer data resulting from its collation and analysis by my staff, became available to the Social Security Department operating in conjunction with the police. I was able to divest myself of close interest in the matter. Likewise, in respect of the discovery by Naval Police at Williamstown Naval Dockyard of false medical certificates used by Union members I was happy for the police to investigate the matter and prosecute the same to successful conclusions; and they did. I said at the time:-

"...the Commission (will) 'hand down' other areas of detected crime once they have been explored to a point that will enable the traditional forms of police investigation to be undertaken."

(Interim Report No. 2, p. 9)

I have observed that direction throughout the period of my Commission and, thereby, have divested myself of the less significant operations allowing concentration on what have appeared to be matters of greater moment.

5.010 But these "significant matters" did not merely fall into my investigatory lap. Rather, their existence became known through a series of unimaginably odd associations. I will deal with some of those in the remainder of this chapter.

MACBELL MINERALS

5.011 In the middle of 1976 an undertaker Giuseppe Giannarelli, called a meeting at which painters and dockers, Johanson and Lennon, and an estate agent Campbell attended. The purpose of the meeting was to form a company to operate the business of lagging ships' pipes. Those present at the meeting agreed to such an enterprise and a company known as Macbell Minerals Pty Ltd was selected as the corporate entity to undertake the same. That company had been operated by Campbell previously but had fallen into disuse. It was agreed that these four men together with a man Bone, who was an ex-prison officer, would each have a 20% interest in the business. Johanson and Lennon were to provide expertise in lagging, Giannarelli and Campbell were to provide financial support and Bone was to provide some other unidentified support. Later it appeared that another man, Durston, also was to have a role with the company. In due course, I inspected a business card showing him to be the executive director of the company. Campbell sought to minimise the relationship between Durston and Macbell. He claimed Durston was no more than a "liaison officer" between the company and the Union. As Durston was a land developer with no other connection known at that time to the Union this seemed surprising.

5.012 It was an odd group of men. A funeral director who often drank at the same hotel as the executive of the Union; an estate agent and justice of the peace; a land developer who was in prison in the early days of the company's new business; two painters and dockers, one of whom was based entirely in New South Wales; an ex-prison officer. In the circumstances suggested by that peculiar association of men I determined it was necessary to investigate more fully the nature of the business activities of each of these men and of the company Macbell.

5.013 In due course Campbell, who was the secretary of the company, was called to produce the company books. At first he claimed they had been destroyed but after a visit to his office by members of my staff in his company they were found. An examination revealed that the company, contrary to what was said to prospective employers of their lagging skills, had never done any work at all. The books contained only expenditure, never income. Some capital had been supplied by Giannarelli but most of it came from a generous branch of the Commercial Bank of Australia. The closer inspection of the affairs of the directors suggested by all these matters has dominated the Commission's activities for the past four years. Each man in turn has led to many other associated criminal organisations and activities. In this sense, the company Macbell was at the hub of the wheel representing all my varied investigations.

5.014 Examination of the company's accounts showed it was paying money to a man called .
had at different times assumed the name of
. Under the latter name he had practised a fraud on land purchasers in the Ballarat area. He was convicted of fraud charges following a lengthy trial in Sydney and was imprisoned in New South Wales in 1981. He has since been

released. The land in question had been bought from or in conjunction with . had complicated corporate dealings in New South Wales which during the course of his trial necessitated the calling of evidence by

The connection between the Macbell Group, and then became of considerable importance in my investigation. It was the connection with this group that lead to the tax avoidance industry and the "bottom of the harbour" companies which were to figure so prominently in my work in the middle years of the Commission.

5.015 I should indicate that I conducted very detailed examinations into the affairs of Giannarelli, and the other men. As far as Giannarelli was concerned bank records were obtained. Subsequently Giannarelli and his brothers appeared before the Commission and because of evidence given were referred to the Attorney-General for the State of Victoria. Subsequently they were prosecuted for perjury, convicted and sentenced to periods of imprisonment. On appeal to the High Court, those convictions were set aside. Those proceedings took three years to be resolved, effectively preventing further examination of the Giannarellis. It was discovered on examination of the banking records of members of the Giannarelli family there were a number of accounts in false names conducted with the knowledge and apparent approval of the family's banker. This was a tactic which I found time and time again when obtaining banking records. It reflected no credit on the banking system in Australia.

5.016 The man had been convicted in 1976 on a charge of false imprisonment.

. Not only was

he a director of Macbell Minerals but of a further company . A very detailed investigation of his activities was conducted. An analysis was prepared which dealt in minute detail with his business and personal activities. This analysis comprises five volumes and approximately one thousand pages of text. He has been committed for trial on some charges arising from those investigations and accordingly I will not detail further those matters.

5.017 I turn next to the company because its activities in 1978 and 1979 were crucial to my developing interest in tax evasion. was another of Campbell's disused companies which was resurrected. In this case, the purpose was for tax evasion. Its "executive" included Campbell, and Johanson; again, an odd mix of differing levels of expertise. Amongst the papers obtained from Campbell was found an application to the Reserve Bank of Australia to bring into this country the sum of \$4.25M. The application said that it was to be a "loan" secured by certain properties. One of those properties did not exist and in respect of the other the current owners knew nothing of the proposed sale. The application was false. Yet the source of the funds was real enough - it was a man from Lebanon. This man was said to be representing oil sheiks from that country and was offering multi-million dollar loans at 9% per annum interest for periods up to 15 years. To obtain these loans it was necessary to lodge "up-front" fees of \$10,000 and travel with that sum to Beirut. A number of Australian businessmen (not only the group) made the trip. No loans ever came through and many "deposits" were lost. It transpired that was at the time wanted in West Germany on charges of

fraud arising out of similar activities. He apparently appointed agents in Sydney to act for him in connection with these various loans.

5.018 was one of the other applicants for funds and \$20,000 was "invested" with in anticipation of loans which were never forthcoming (in his case it is unlikely that he suffered personally as the monies came from a company which controlled and milked, and which subsequently went into liquidation). The company which acted as agent for was

. Among its directorate and executive were included men with convictions for forgery and indecent exposure. One of them was deeply involved in pornography and vice and was associated with a drug trafficker. The latter, who must remain unidentified because of outstanding drug trials, sought professional and financial advice from the same

in 1978 and again in 1979. I was to discover much later in my enquiries an association of this group with an Australian man . The latter was involved with the Meinerhagen gang in Germany. Last year he was extradited from South Australia to serve a seven year term of imprisonment on drug charges in Canada. I am reminded of the "internationality" of many of our leading criminals, as I write this.

5.019 The most important discovery about [redacted], however, was its bank accounts. In the space of a few weeks in 1979 over \$9M passed through it. It was a \$2 company. Campbell, Johanson and [redacted] were the directors. Further investigations revealed that Macbell Minerals itself was paying small amounts of money to [redacted]. Campbell, when asked who [redacted] was, said he was a carpenter from Mornington. In fact he was the same

. No satisfactory explanation was ever given for these small payments.

5.020 The \$9M passed through or from an account at Blacktown, New South Wales. When examined, that account and others showed a small suburban bank handling hundreds of millions of dollars. The firm orchestrating this money movement was . Thus I had arrived at the settlement room of one of the "bottom of the harbour" taxation schemes.

5.021 From this point the situation became rather more complex. After much prevarication by and (the man had by this time retired from the company and was never called as a witness) the records of were found. The records themselves were enormous in quantity and even at this stage I have not been able to fully examine them. They detailed much of the taxation fraud which had been undertaken by and identified clients and others also involved in the fraudulent activities.

5.022 had been involved in other companies of doubtful reputation. In the early 1970's he had been concerned with and in 1975 was a director of . He had left that company in 1977 to take up a directorship in . had been with in the early 1970's. This followed convictions in Hobart in 1968 for false pretences. He later worked with and was closely associated with in 1975-76. He became a barrister in New South Wales during this period although he never formally practiced as such. In applying for admission to practice as a barrister in the New South Wales Supreme Court he failed to disclose his prior convictions from Tasmania. He joined at in 1977 and they subsequently, with , formed . had in the mid-1970's been a director of at the time that

company crashed. He was later ordered to pay \$100,000 to creditors in respect of the failure of the company. The man was also involved in the promotion and execution of the tax schemes.

Section 16

5.023 So, by October 1981, I was aware of the connection between the group and the personnel. It became apparent that I had been introduced to a massive tax avoidance industry. I might say that I was aware that during that same period an investigation was being conducted by Inspectors appointed by the Government of the State of Victoria pursuant to the provisions of the Uniform Companies Act 1961 (Vic). This investigation was conducted by Messrs McCabe and LaFranchi and was in respect of the group of companies which were involved in tax schemes promoted by Brian Maher and his associates. I became aware, informally, that members of the Union had participated as dummy directors in the companies involved in those schemes. However, the members of the Union involved appeared to be different to the ones I was investigating with. Unfortunately, I was not able at that time to avail myself of all the information garnered by those inspectors because their report was not tabled by the Victorian Government until well into 1982. I was aware that the inspectors had some difficulty in pursuing their enquiries because of the problems associated with Section 16 of the Commonwealth Income Tax Assessment Act. I was shortly to be confronted by the same difficulty myself. Because of that difficulty I made recommendations in Interim Report No. 3. I detailed my observations to that stage involving the participation of painters and dockers in schemes. I said:-

"...the Commission is in possession of comprehensive evidence that significant members of the Union have found themselves appointed directors of companies with 'paper' assets amounting to tens of millions of dollars. Their use of false names and false addresses seems to have been effective in hiding their identity from the authorities and thus achieving the object of the scheme'."

(Interim Report No. 3, p. 11)

5.024 I went on in that Report to indicate that my continuing investigations were frustrated by an inability to obtain access to Taxation records and to results of investigations carried out to that time by officers of the Tax Department. I cast the situation in the following terms:-

"The situation has now been reached by the Commission in this area of its investigation where firstly access is essential to the records of the Commissioner of Taxation and secondly there is a need for the closest co-operation between this Commission and the Taxation Office in the furtherance of its investigation. The Commission requires the active assistance of Taxation Investigation Officers. I require access to taxation records. Joint action of this kind is as necessary in this area as it has proved to be where the Commonwealth and the States have set up joint task forces to investigate criminal organisations whose activities cross State borders. Provided there is this joint co-operation, there is good reason for believing that the Commonwealth will be able to take concerted action in this area of tax avoidance with the countless financial benefits not only in respect of past schemes but also in the deterrence of future frauds."

(Interim Report No. 3, p. 16)

5.025 The Government was prepared to accept my recommendation, Section 16 of the Act was amended and I was subsequently - and have continued so to be - able to obtain appropriate records when necessary.

5.026 Lest it be thought that all of my investigative resources were involved in this area of tax avoidance let me record some other matters which were then the subject of active operations.

DEAD MEN

5.027 In the March 1981 Interim Report, reference was made to the apparent provision of false identities by Union branches for their members. To that stage the major enquiries had involved the branch of the Union in Victoria. A comparison of the membership records of the Union in that State with those at the Williamstown Naval Dockyard indicated that in eight separate instances men who had died were subsequently transferred from Victoria to other branches of the Union in Australia. Death certificates for those men were obtained. Confirmation was thereby established of death, presuming the death certificate itself was legitimate and that it referred to the person correctly identified as the deceased in that certificate. Thus, it was improbable that the Union's records indicating the man was alive and transferring his membership were accurate. I was interested to establish the basis of these "transfers". It was not until April of 1981 - despite my earlier interest in the phenomenon - that I was able to identify one of these "dead men" working in another State using the identity assigned to him.

John Knight

5.028 The man identified was "Allan Bees". This man was said to be working in Sydney in November 1980 where he suffered an injury for which he claimed workers' compensation. This was notwithstanding that "Allan Bees" had died in Melbourne in December 1979. Not only had he died but Jack Nicholls, the former secretary of the Union, had attended his funeral and delivered the eulogy. As Bees' transfer had been arranged through the Victorian Branch of the Union it seemed certain it had been done fraudulently for the purposes of providing Knight with a false identity.

5.029 A subpoena was served on the man masquerading as "Allan Bees" in Sydney to appear on 11 May 1981. He did not attend in answer to the subpoena and it was necessary to issue a warrant for his arrest. He was examined as to his correct identity and promptly agreed that his correct name was "John Andrews". He said the name Bees was one provided to him by someone in the Victorian Branch of the Union but failed, or refused, to identify that person.

5.030 The interest in this man was that he had used the nom-de-plume. In due course it was ascertained that his correct name was John Knight. Under that name he was then required in Victoria to serve sentences totalling in excess of four years and in respect of which warrants for his apprehension had been issued. He had also absconded from bail in London where he had been charged with larceny. He was facing two separate theft charges arising out of activities in New South Wales in 1980. In due course, he was treated reasonably leniently by the New South Wales courts in respect of those charges (before whom his prior offences were not alleged). He was charged with perjury as a result of his evidence before me and in 1983 was sentenced to two months imprisonment. I understand that extradition proceedings in respect of the outstanding Victorian warrants

are presently extant. He has absconded once again, this time in New South Wales (where he was allowed bail notwithstanding his history) thus avoiding the extradition.

5.031 It became clear during the course of examining Knight's bank accounts that he had a close association with Leo McDonald the welfare officer with the Victorian Branch of the Union. I will refer to that association below.

Tony Bissett

5.032 The case of Anthony Michael Bissett was of greater Union significance as it involved Union branches in other States which must have been privy to the false identity created in Victoria. In respect of the Knight matter there was no evidence which implicated the New South Wales Branch in the deception being practised.

5.033 As I have reported in my Interim Report No. 4 when dealing with "the facilities offered by the Union", Bissett was the son of Douglas Sproule the vigilance officer of the Victorian Branch. Late in 1978 Bissett was charged with theft and drink driving offences and was due to appear in court in January 1979. He was then employed as a painter & docker at the Williamstown Naval Dockyard.

5.034 Apparently Bissett did not wish to appear in court in January. A man Rhodes who was a member of the Union had died in September 1978. Despite his "death", on 25 January 1979 he was granted an open transfer of his union membership by the Victorian Branch. Bissett took up that transfer and thereafter removed himself interstate to Port Kembla, Queensland, Newcastle and eventually Sydney. By a close investigation of records of Union employers in those various centres I was able to follow the movements of Bissett around Australia. I have commented previously on the methods of "breaking aliases". It is not uncommon for

men when using aliases still to use their correct dates of birth (or at least birthdays) together with names of various of their families. By a detailed analysis using the computer facilities I was able to identify Bissett's movements and the various aliases assumed.

5.035 Subsequently he was located in Tasmania and appeared as as witness in June 1981, both in Hobart and Melbourne. He would not admit the identity of the member of the Union Executive in Melbourne who had facilitated his change of name. He did agree that it was either Jack Nicholls, the secretary, or Doug Sproule the vigilance officer. He admitted using the different names during his movements around Australia.

5.036 His presence in Hobart was brought to the attention of the Victorian police authorities and he was extradited to Victoria to face the charges which had been pending since January 1979. He was thus unable to avoid the consequences of that previous criminal conduct.

Guido Spiller

5.037 A separate fraud using false names (but not involving "dead men") was exposed in hearings in June 1981. This involved one man making two separate claims for compensation against different employers but covering overlapping periods of employment. The man involved was Guido Spiller. He used the assumed names of John Joseph Spiller and Peter John Wilson when making workers' compensation claims in the period 1976-1980. I have referred to this matter in a previous Report (as I have with the matters of Knight and Bissett) and will not repeat the details here.

Phillip Scott

5.038 There was one other assumed identity which caused me some difficulty during 1981. This was in respect of a man Phillip Scott. I was aware of a member of the Executive of the Victorian Branch of the Union by that name. I was also made aware of another man using the same name and date of birth but who was clearly not identical with him. During the course of 1981 a substantial effort was made to identify this man. Eventually, as the result of the work done by my staff, I was able to identify him as Frank Kinsella. Kinsella was wanted for attempted murder in Brisbane. He had absconded from bail in 1975 and had transferred a Union membership of a man called "Johnson" from Queensland to Victoria. Since 1975 he had lived in Victoria under various aliases and had worked from time to time as a member of the Union. He was working as a member of the Union in November 1981 when served with a subpoena to appear. He gave a false name and he failed to answer questions. As a result of information given by my Commission to the Queensland police, extradition proceedings took place shortly thereafter.

5.039 I was unable to ascertain the precise nature of the association between Scott and Kinsella. Scott was to claim, informally, (he never gave evidence) that Kinsella must have adopted his identity by "stealing" it. Nor has Kinsella given any explanation as to the source of his identity. He refused to give evidence on any occasion on which he has been called. Both men have subsequently been fined for failing to answer questions pursuant to the provisions of the Royal Commission Act.

5.040 The point, again, of this operation was to ascertain the basis on which false identities were being provided. That is, was it purely with a view to shielding them from apprehension by the authorities? Were any "fees" payable for this particular service?

5.041 There was another remarkable coincidence, if that is what it was, in relation to the man Kinsella. Under the name of Phillip Scott he was - in conjunction with Johanson, the director of Macbell - one of the dummy directors for the bottom of the harbour companies used in the tax avoidance schemes. On the other hand, the "real" Phillip Scott figured prominently in my investigations into the SP bookmaking area. I also record that Kinsella was acquitted on his trial in Brisbane some time during 1982 and thereafter returned to Victoria. It was not until May 1983 that he was called back to appear before the Commission (whereupon he again failed to answer questions). He has since figured prominently in other investigations in respect of which criminal charges have been laid against his associates.

SP Bookmaking

5.042 I have referred to the identification of the dead man "Bees" as Knight. When analysing Knight's bank accounts I found that \$38,000 passed through his accounts in eleven months up to May 1981. He claimed the source of these funds to be gambling winnings. I ascertained that amounts in excess of \$5,000 were paid from accounts conducted by Leo McDonald in Melbourne. I conducted an examination of McDonald's banking and discovered that an amount of \$5,200 had been paid to him by a bank cheque from the ANZ Bank Malvern. Separately, he had received a cheque in excess of \$2,000 from an account conducted by the defacto

wife of Charles Wootton. I was unable to establish the basis for these payments save that in both cases they appeared to involve gambling activities.

5.043 The account at Malvern was identified as being that of Patricia Lorraine Fox. Her husband is Donald Andrew Fox who is and was known to be a very heavy gambler. An analysis of her account showed that in the three years up to April 1980 an amount just under \$2M was deposited to it.

5.044 This amount seemed to be unusual for an unemployed housewife. As a result I caused to be carried out a fairly extensive analysis of her banking arrangements. In the course of that it appeared that many transactions had been conducted between the operator of the Fox account (who it subsequently appeared was the husband Donald) and a company Ecrip Pty Ltd. This company was identified as the corporate entity pursuant to which Harold Price operated his Australia-wide SP bookmaking activities.

5.045 A preliminary inspection of the banking records of Ecrip and Price indicated a huge money flow from the early 1970's onwards. As it became apparent that a number of his customers were painters and dockers or associates I resolved to carry out a long term investigation into Price's activities. This was to culminate in November 1983 with Price's appearance in Melbourne. He did not give evidence on that occasion in the circumstances which are set out in more detail in Volume 4 of this Report. My investigations into SP bookmaking generally are covered in that volume and I propose to say little else about them except that they assumed a fairly low profile in my investigations on a day-to-day basis. Nevertheless, a very large amount of analytical work has been done which is demonstrated by the matters set out in the detailed volume. It will be apparent that Price was not the only major target

of that operation. Certainly the painter & docker Scott - who was identified as a medium level SP bookmaker - also figured prominently in that part of my work.

Tax Evasion

3.046 With access to taxation documents - following the amendment to Section 16 of the Income Tax Assessment Act - and with a clarification of my Commonwealth terms of reference enlarging the area of criminality to be investigated - I continued my investigations into that area in early 1982. It was then, for the first time, that Federal Court proceedings were taken against me in respect of my terms of reference with a view to stopping the tax investigations. I selected an example of a particular set of company transactions to investigate thoroughly. It involved the J.S. Heap group. Proceedings were taken in the Federal Court to prevent me conducting this examination. They were defeated both at first instance and on appeal. They delayed the course of my work, however, for some little time.

5.047 This tax investigation became a headspinning exercise. Just as [redacted] had taken me to [redacted], that company in turn took me to [redacted]

. This company was another one operated by Johanson, this time with a Selwyn Wallace both operating under false names. Johanson was well known as a painter & docker and criminal. Wallace was a man who had served a period of imprisonment for a murder committed in the 1930's, although he had been out of prison since the mid-1950's. He had been involved in other criminal activities since his release prior to coming to my notice. It appeared that these two men had set up as a vehicle for delivering companies directly to the "bottom of the

harbour". As the registered officer of was a flat in , the expression "bottom of the Yarra" was more apposite.

5.048 The company was to figure in much of my investigations during 1982. It appeared that many of the promoters of the "harbour schemes" were anxious to avail themselves of the services so expertly provided by Johanson and his friends. They were to figure in companies "treated" by , , and and a Queensland accountant . It was the connection with the latter that was to provide the starting point for another major investigation towards the end of 1982.

5.049 But that is jumping ahead. Throughout the first half of 1982 the major thrust of my investigations was into the tax evasion area. With access to taxation records I was able to ascertain the difficulties which had been encountered in attacking the basis of the tax avoidance industry.

5.050 McCabe and LaFranchi had been critical of the lack of assistance given to them by the Tax Department. I was able to obtain copies of legal advice given to the Commissioner of Taxation during the period from the mid-1970's onwards. It was apparent from that advice that action could have been taken to expose a particular tax promoter, in particular Brian Maher. Nevertheless, because of what I found to be the gross inefficiency of the Perth office of the Commonwealth Deputy Crown Solicitor no proceedings were taken. My investigation into those matters formed a substantial part of volume one of my Fourth Interim Report. It is hardly necessary to repeat those matters here save to indicate the time taken operationally in ascertaining the facts.

5.051 The major thrust of the Fourth Interim Report was that there be appointed a "task force" (by whatever name called) whose function would be to prosecute the promoters of what I regarded as fraudulent tax evasion schemes. That force would also be charged with the responsibility of at least coordinating the recovery by civil proceedings of outstanding tax. My view was, and still is, that the law as it existed at all relevant times was sufficient for the purpose of both criminal and civil proceedings. I did not recommend retrospective legislation.

5.052 The result of that Report was that the Government accepted my recommendations and created the office of Special Prosecutor. It thereafter appointed Mr R.V. Gyles QC of the New South Wales Bar and Mr Robert Redlich of the Victorian Bar as Special Prosecutors pursuant to the new Act. Mr Gyles' brief was to:-

"...assume overall responsibility for the handling of the prosecutions for the alleged taxation frauds referred to as "bottom-of-the-harbour" schemes and for coordinating the recovery by civil remedies under existing law of the amounts thereby lost to the Commonwealth..."

(Special Prosecutors Office,
Report by R.D. Gyles QC, 30th June 1983)

5.053 I was delighted by this initiative as it accorded with my recommendation and took from me the responsibility of further investigating this area. I have subsequently liaised with Mr Gyles on a regular basis. There has been a complete exchange of relevant information in respect to matters coming under his charter. It was not necessary for me to actively pursue this particular area after mid-1982.

5.054 Of course, at the same time the appointment of Mr Redlich facilitated the handover of other areas which were then the subject of continuing investigations by me. I do not intend to detail those matters here as they are the subject of discussion in other parts of this Report and, in particular, in chapter seven of this volume.

Station Hotel

5.055 Notwithstanding my major involvement with investigating the tax area during 1982 there were other continuing enquiries. One of these which was relatively low key was into the Station Hotel. Following the publication of media articles in February 1982, Loris Cooper, the owner of this hotel, appeared to give evidence. Those matters are referred to in my Fourth Interim Report. I do not propose to canvas them again save to say that there appeared to have been gross intimidation of Mrs. Cooper both before and after she gave evidence before the Commission.

5.056 Whatever the merits of the matter were - and I was unable fully to investigate the painter & docker point of view because of the refusal to give evidence - there were a number of disturbing features in relation to this matter which I listed in my previous report:-

"Firstly there would seem to be an assumption by the painters and dockers that they were entitled to act without regard to the law. Secondly that assumption would seem to be based on the ability of the painters and dockers to rely on the fact that other citizens would not report their activities to the police because it was well-known that the painters and dockers were a group of whom ordinary people should be terrified. Thirdly there was the reality of violence as demonstrated in the hotel. Fourthly there was the threat of additional violence of a major kind. Fifthly there was the imposition on the hotel of an illegal activity."

(Interim Report No. 4, Vol 1, p. 107)

I was unimpressed with the attitude of the Union. This was an area, like many others, where I would have been much assisted by evidence from Union members.

Further Taxation Fraud

5.057 During the year I became aware of another fraud involving painters and dockers. This fraud was perpetrated by a man (or men) collecting unclaimed group certificates from employers of painter and docker labour and then submitting those to the Taxation Department as his own. By this means, he was able to obtain refunds for himself in respect of a number of different men. This matter became the subject of a full investigation by members of the Australian Federal Police with whom officers of my Commission cooperated. In particular, access was granted to our database and a coordinated approach to the matter was achieved.

5.058 In due course, Special Prosecutor Redlich took over the conduct of this matter and Peter Wilfred King was charged with offences. He was convicted at the Melbourne Magistrates Court in December 1983 and sentenced to a term of imprisonment. This is an example of an operational area where the contribution required of me - after initial identification of the offence - became minimal although there was a continuing liaison and, to some extent, coordinating role involved.

5.059 In January 1982, whilst investigating the activities of the men associated with I obtained access to some interesting banking records. This was part of a complicated investigatory process during which I sought to identify the directors of by their correct names.

This I was able to do. But as with other operational areas, it in turn widened the scope of my enquiries. I became aware of the tax evasion promoter (subsequently to be the subject of charges by Special Prosecutor Gyles) and of a company. This was a so-called "merchant banker" (this appellation was so often used by companies involved in tax evasion as to render the title meaningless) the major role of which appeared to be the provision of "finance" for the round-robin banking transactions which were part and parcel of tax evasion settlements. Having obtained certain of that company's records and formed a certain view of its activities I have referred it to the appropriate bodies for continuing investigation. Personnel of had played, and were then playing, a major role in the project which was as at the time of my initial interest in it being promoted around the country.

5.060 An accountant was identified as a Brisbane contact of the men. was promoting various tax schemes to clients. I sought banking documents which were produced from a Brisbane branch of the Commercial Bank of Australia. I was intrigued that a \$2 company () the directors of which were, I discovered, the men (under their correct names) was to be involved in oil drilling and was to borrow overseas from Singapore - and from a leading overseas bank - many millions of dollars supposedly for such oil drilling. The sum of \$400 million was mentioned. It was not merely of interest to me but of concern as it seemed there might be international monetary repercussions with a transaction of this size. But why was it these men who were known to me merely as tax company directors - of no particular business expertise - were to be the directors of this company?

5.061 I was not able to develop my interest in this particular matter at that time. I became aware shortly after my public exposure of the directorate in February 1982 that the men were summarily "dismissed". I had expected that the professional people who were apparently behind the company would then work within the law. Such was not the case. By July 1982 I had completed the major Interim Report to Government dealing with the tax avoidance industry and many other matters. By September 1982 I was able to look again at Hamidan. I was not impressed with what I found.

5.062 During the next six months, the investigation into this company played a major role in my operational activities. A total of 56 witnesses were called, 2,300 pages of transcript recorded, 450 exhibits tendered and 42,000 pages of documents examined. (During that same period, incidentally, I took evidence from another 130 witnesses and received tens of thousands of pages of documents relating to other matters of on-going concern. The desirability of my maintaining the impetus of other investigations necessarily curtailed the time available to devote to the investigation of the oil drilling company.)

5.063 During the period of the operation I liaised closely with the Queensland Fraud Squad, the Special Prosecutor's Office conducted by Mr Redlich, the Tax Office and other Government Agencies. Charges were laid by the Queensland Police against the principals. Subsequently charges were laid against various men in Perth. The Queensland charges resulted in committal for trial of four men on charges of Fraud; committals in Western Australia in respect of charges laid by the Special Prosecutor - but now supervised by the DPP's Office - have not concluded. The Queensland trials are expected to take place sometime in 1985.

5.064 I submitted Interim Report No. 5 in July 1983. It contained a complete history of this matter (in Volume 3 therefore) and a shorter sanitized summary of 126 pages (in Volume 2). Any reader seeking further details of my investigation should seek access to such documents from Government. The recommendations I made were many. They concluded with a recommendation that the Report have a wide circulation within Government and among law enforcement agencies. Unfortunately, that does not seem to have occurred.

5.065 I should state that in the course of this matter interviews were conducted by my staff with residents of Singapore and Hong Kong and assistance sought from Government agencies in those countries. With members of my staff, I visited Singapore for four days in December 1982 for the purpose of establishing liaison with those agencies. Separately, a team visited Singapore in March 1983 in an endeavour to complete the enquiries. I again record my gratitude to the Attorney General of Singapore and to the Singapore Police for the assistance and co-operation shown to me and my staff. I also thank the High Commission representatives in Singapore who facilitated that visit. Two members of my staff also visited Hong Kong for one day in December 1982 and I note my appreciation to the members of the Royal Hong Kong Police who assisted them with their enquiries and provided information.

5.066 Notwithstanding the commitment of time and resources to the Hamidan investigations other matters were proceeding apace. I had had the assistance since 1 October 1980 of two counsel, Mr Douglas Meagher QC and Mr Rex Wild. By Easter 1983 it was obvious - because of the workload already carried by those men and the need to give some attention to "fresh" targets as they arose week by week

- that further counsel was required. In May of that year Mr Lex Lasry was appointed as a further counsel assisting. I have described separately the role undertaken by counsel in my Commission. It is only necessary to say here that the operational demands of the Commission have certainly justified the briefing of three counsel.

Carroll

5.067 On 3 January 1983 Ian Carroll was shot dead. He had been a member of the Victorian Branch of the Union and of its executive from 1974-78. He had last worked as a painter and docker in 1976. In 1974, for some very short time, he was acting secretary. Police since his death have been seeking to interview one Russell Cox, a criminal and escapee who at various times has been "number one" on the "most wanted list".

5.068 I have conducted an exhaustive investigation into the activities of Carroll and his associates (most of whom are alive and of great current operational interest). There is little point in identifying those associates in this part of my report. A summary of their activities appears as Volume 6. I say summary - an analysis has been conducted of the affairs of these people. That analysis is exhaustive and is the result of many hours of labour by members of my staff and in particular of senior assisting counsel. It contains, approximately 1165 pages and results from consideration of the evidence of 38 witnesses, 395 exhibits and 33053 pages of documents. The analysis has been made available to appropriate bodies to assist in the continuing policing of various areas of criminality. There is no doubt that the former associates and friends of Carroll will continue to create work for those entrusted with the enforcement of the criminal laws in Australia.

5.069 I should indicate that the Carroll investigation and the extended links which have been established have led the Commission to a wide variety of other criminal activities and, in some cases, organisations or networks. These have been both in and without Victoria. A solicitor used by Carroll in Melbourne has been investigated, in conjunction with the Victorian Police Fraud Squad; that man has been referred to the Special Prosecutor and I understand that charges have now been laid.

5.070 Furthermore, it was as a result of the extended links with the Carroll Group that I visited Queensland in early 1984 and received information which led to my investigation into drug dealers residing in the Noosa area of that State. I will refer again to those matters below. As to other associates I refer to the matters contained in volume six.

Lockyer

"It is only by not paying one's bills
that one can hope to live in the memory
of commercial class."

Oscar Wilde, Phrases & Philosophies
For the use of the Young

5.071 Another matter arose in the summer holiday period of 1982/83 which was to lead to a new range of investigations. By this time, Special Prosecutor Gyles had commenced operation. In the course of his work he had arranged for a warrant to be executed in respect of the leading tax evader, Donald Lockyer. Lockyer in his activities had used a variety of "dummy" directors and had acted as a sub-promoter for Hamidan.

5.072 I obtained documents from Lockyer's Melbourne office and evidence was given by members of his staff. I discovered he was bankrupt and had committed numerous offences against the Bankruptcy Act in different States of Australia. His wife, Suzi Lockyer, was living in California. Between them they had assets of some substance. A estimate of \$12M has been made. I liaised very closely with the two Special Prosecutors, Messrs Gyles and Redlich. The latter initiated civil proceedings against Lockyer and his wife consequent to taxation assessments issued against both of them. "Mareva" injunctions were obtained. Prosecutions were launched by Mr Redlich for Bankruptcy Act offences. Lockyer was convicted and gaoled. He has since been charged by Mr Gyles' office with conspiring to defraud the revenue of the Commonwealth. Those matters remain incomplete. I made available documents obtained by me from Lockyer's offices in various States to the Special Prosecutors. I have encouraged their continuing and separate investigations and proceedings, not that much encouragement was needed.

5.073 I believe that the particular "joint" operation involving Lockyer has been an illustration of a very successful undertaking by the investigatory body - with a selective and proper use of its powers - liaising with prosecutorial and civil recovery agencies. The action taken by Mr Redlich's group was speedy, efficient and effective for the purpose. Other targets suggested themselves during the course of my investigation into Lockyer's affairs and I will refer to them below. Once again, the networks extended into other areas.

The Fight Against Organised Crime

5.074 Insofar as it has had some effect on operational matters I repeat here that I and my senior counsel had a considerable involvement at different times

during 1983 in proposals relating to a national crime agency. The Liberal Government had enacted its National Crime Commission Act at the end of 1982 but this had not been proclaimed by the time of the March 1983 election and the change of Government. After the election, considerable discussion ensued as to the direction which crime prevention should take in this country. Douglas Meagher presented a series of papers to the 53rd ANZAAS Congress held in Perth in May 1983. Those papers were entitled ORGANISED CRIME. I chaired the session at which they were presented. Both of us were invited subsequently to attend and speak at the seminar convened by the Federal Government in Canberra in July 1983. Volume one of my fifth Interim Report which was delivered in the same month was, in part, directed again to the issues involved at that seminar. A considerable amount of time was taken in the middle of the year in responding to these issues which were of some moment.

5.075 I had, of course, already dealt with the problems, as I saw them, in the fight against crime in Interim Report No. 4 delivered in the previous year. As I have said elsewhere in this Report, I believe the major impetus for the previous Government's legislation for a Crimes Commission had come from that Report and the work of my Commission.

5.076 There were to be much greater demands on my time and that of my senior staff at the end of 1983 and into the new year. This followed the reference by the Senate of the pending legislation introducing the National Crimes Authority to the Standing Committee of the Senate on Constitutional and Legal Affairs. I will not repeat a description of the work undertaken save to indicate that it was time consuming and, to some degree at least, disruptive of the operations of my Commission. I turn, now, to one of the personalities in respect of whom enquiries and operations were able to proceed during 1983.

Ian Beames

5.077 As an offshot of my collation of material in respect of Lockyer I was directed to the activities of a Queensland accountant Ian Beames. This man already had a criminal history following his involvement in what might be termed white collar crime. At the time I commenced my investigation into his activities he was still in prison. I knew already something of him. He had been Brian Maher's "representative" in Singapore in 1978 and in that capacity, had been involved in dealings with the Nugan Hand organisation.

5.078 Beames gave evidence in regard to a company P. & S. Meats Pty Ltd. This company, despite its name, had nothing to do with the butchery trade. Its major activity was in the field of tax minimisation through film schemes. The directors of this company were Beames, Lockyer (at one stage) and a man called Brian Ray. A great deal of money passed through the accounts of this company despite the fact that it was of no substance.

5.079 My enquiries took me to a man called McCarthy who was a financial adviser employed by Lockyer. He had formerly been employed as a manager with the Comalco House branch of the Bank of New South Wales in Brisbane. He was dismissed from the Bank for misconduct having allowed the bank to become a creditor of the Lockyer group of companies to the extent of \$2M. He was dismissed in December 1980 and thereafter sought and obtained employment with Lockyer. He was examined in a public session of the Commission in June 1983. His activities and the evidence given by him have been referred by me to the Queensland Police Fraud Squad for its attention.

Kerry Packer

5.080 From other information I had received, but which it is not appropriate to detail here, I was anxious to pursue the financial arrangements of P. & S. Meats. I discovered that in February 1980 cash payments totalling \$225,000 were made by this company to Kerry Packer. I received conflicting evidence in relation to Mr Packer's involvement with the company P. & S. Meats. Those matters are developed more fully in a separate volume of this Report. All I need say here is that depending on which view is accepted, Mr Packer was either a financier/investor or an investor in the film schemes promoted by P. & S. Meats. A matter of separate interest is that Mr had borrowed the sum of \$925,000 from a company Progress Credits in Singapore at the end of 1979. This money was brought into Australia pursuant to Reserve Bank approval. \$800,000 of the amount received was invested, in a manner contrary to the advice given to the Reserve Bank, in P. & S. Meats. I was anxious to probe the film scheme. Because of my previous experience with the personnel involved in the Hamidan exercise I was sceptical as to the legitimacy of this scheme. I was also most anxious to establish precisely what happened to what otherwise appeared to be unexplained cash payments. There was a further cash payment of \$120,000 from the accounts of P. & S. Meats later in 1980 in respect of which no explanation has ever been received by me despite earnest enquiry. stated he had no knowledge of it although his signature was on the cheque.

The Death of Coote

5.081 As part of my investigation into the connection between Ray and Packer I was informed that these men had dealt in a number of joint land transactions in Queensland. One of these was at Victoria Point. In the course of looking at that development I became aware that

the manager of the branch of the Bank of New South Wales at Capalaba had resigned and subsequently become employed by Brian Ray. This man was Ian Coote. This had a familiar ring to it. Mr Coote's branch of the Bank was involved, prior to his resignation, in lending money to purchasers of land at Victoria Point. The circumstances of those loans were suspicious and, once again, they are dealt with at some length in the separate volume dealing with those matters.

5.082 Mr Coote died on 16 December 1982 of gunshot wounds. The view at the time was that he had committed suicide. I am satisfied that it was murder. My views and recommendations are set out in the separate volume.

5.083 The investigation into these matters was, from time to time, interrupted by Federal Court proceedings taken by various of the parties involved. However, as at December 1983 all court proceedings were abandoned. I was therefore able to continue my investigations until 30 June 1984 when, in keeping with my agreement with Government, I suspended operations. There are matters still to be investigated in this area. They are of considerable importance.

SP Bookmaking

5.084 In Spring 1983 preparations were made for public hearings in respect of the SP bookmakers Price and Scott. The purpose of those hearings was to indicate the level of income of these men and to expose those activities to public gaze. As it turned out, Price was not able to be identified by name as he had been apprehended conducting an SP operation when served with his subpoena to attend before the Commission. As it was then thought that he would be prosecuted and before the courts in a relatively short time I deemed it appropriate not to have his name released. It

is now nearly a year since that time and he has only just been served with his proceedings (and that because of the efforts of members of my staff). As it is unlikely that Price will be appearing before a jury I see little harm in now identifying him.

5.085 During the course of those hearings, counsel quantified the loss in revenue sustained by Governments because of the operations of SP bookmakers. Although related to the particular man appearing then, it was clear that, if these figures were extrapolated, the loss was great indeed. My intention was to concentrate the minds of Governments and the community on this problem. It was important, as I saw it, for the community to decide its attitude to the SP industry generally.

5.086 At the same time, evidence was also called from a number of bank officers. This evidence again confirmed the indifference some officers maintained towards community standards and laws when looking to the interests of their customers. Very little regard appears to be paid to the legitimacy of customers' operations; rather, it is a question of whether the client has the dollars or the "associations" to justify his being given a favoured position by the banker.

5.087 Evidence was also called in respect of a "pricing service" operated by Ray Michael in New South Wales and also interstate. The evidence was that Michael, at various times, supplied both Price and Scott (amongst a great many others) with pricing information. This was vital to their business - without it an SP cannot operate. In the course of those investigations I received information which led to the view that Michael may have been "nobbled" in respect of the evidence that he was to give. He had received a visit from a number of painters and dockers whilst his evidence was part-heard. The painters and

dockers involved were called but, as did Mr Michael eventually, they refused to answer questions. They were referred to the Attorney-General and in due course prosecutions followed. I refer to those matters elsewhere in this Report. A considerable part of my time was taken up in investigating these allegations which seemed to be crucial in their application to the role that a Royal Commissioner plays.

S.A. Union Extortion

5.088 During the term of my Commission I had received allegations of demands made by members of the South Australian branch of the Union against ship owners. I first took evidence of them, in confidential session, in Adelaide in 1981. Those allegations were very carefully investigated by members of my staff and, under their general direction, members of the Australian Federal Police based in South Australia. This matter is the subject of a separate chapter in my Report. Those allegations were the basis of a week's public hearings in Adelaide in October 1983. I returned to Adelaide in April of this year to conclude those hearings. It was necessary to hear submissions from counsel assisting me and counsel instructed by the Union in respect of the matters raised. I deal with these matters in chapter 2 of volume 3 of this Report.

Drug Trafficking

5.089 In considering this operational report it will be noted that there is no reference in it to drug offences. It should not be thought, however, that this indicates I have not - in the course of my investigations - been interested in this area of criminality; quite the contrary! However, it is a sensitive area and one in which I have had to exercise care in preparing this Report. In particular, I was anxious:-

- (a) Not to associate unfairly any person with the trade in drugs;
- (b) not to interfere with any current operation mounted by law enforcement bodies;
- (c) not to identify any drug offender currently awaiting trial.

5.090 These restrictions have meant that it is virtually impossible, in a public sense, to describe my investigations. I can say that throughout the last two years, I have been monitoring various drug offenders and operations which have been run by different "task forces". Information has been transmitted to and from appropriate police and other forces. In this way, some loosely coordinated role has been achieved. When I have been able to obtain useful information following the acquisition of banking and/or other documentary records I have been anxious to make that available. A number of arrests and prosecutions have resulted from information obtained, analysed and disseminated by my Commission. Where possible, I have referred to those in Chapter 7 of this Volume.

5.091 In appropriate cases I have encouraged joint action by those entrusted with drug enforcement and those with the responsibility for collecting revenue. Although Section 16 prevents Taxation investigators from distributing information gleaned from tax offenders (who are also drug dealers) nothing in the law prevents the police officer from informing the Tax investigator of his suspicions as to the undeclared income of the dealer. Thus, it may be that although the dealer is able to escape the heavy penalties imposed by the criminal law he may still fall foul of the revenue law - which in turn, in some cases, may provide penal sanctions for the particular misbehaviour. This is an area which should be explored by the authorities and is the subject of recommendations in volume 5 of my Report.

5.092 There were a number of extant investigations into drug related matters of criminality being investigated by me as at 30 June 1984. In respect of these matters analyses had either been completed or were well advanced. Those matters have been made the subject of proposed references to the National Crimes Authority. I sincerely trust that the Authority will proceed with those investigations.

Other Matters

5.093 In preparing this overview, I have not sought to specify every "target" identified and/or pursued by my Commission in the last four years. Instead, I have sought to highlight the major ones and to demonstrate how each developed from another. I have no doubt that if the outstanding investigations are continued they will in turn lead to other and, quite possibly, bigger targets. Although I have specified what I have called "major" areas of criminality in this chapter there are others of some substance with which I have been concerned. These cannot be identified at this time in a public document. They must remain for the time being the subject of confidentiality as between Government, the National Crime Authority and my Commission.

CHAPTER 6 - THE COMMISSION AND THE COURTS

INTRODUCTION

6.001 My intention in this chapter is to detail the court proceedings which have been brought against the Commission during the last four years. Those proceedings - with one exception in the Federal Court - have sought to challenge my investigations into particular subject matters. There have been various writs, summonses, notices, hearings and appeals taken by different parties but in each and every case they were to no avail in law. Each one of those proceedings has resulted in a dismissal of the challenge to the Commission's work. Nevertheless, they have been effective in delaying my progress; in no case fatally to the operation but in some cases in such a way as to leave some investigations incomplete. Because it is important to see the length to which parties will go in expense of both time and money in seeking to prevent a close enquiry into their affairs, I will summarise these court proceedings in the course of this chapter.

6.002 These proceedings may be regarded, and I do so regard them, as the legitimate expression of a citizen's right to challenge the activities that are perceived to affect his interest adversely. I have no quarrel with this legitimate and open conflict.

6.003 In each case where attempts have been made to halt my investigation by the issue of proceedings I have been represented efficiently by Australian Government solicitors or the Victorian Crown Solicitor, who in turn have instructed able counsel. That representation has in every case been successful. I acknowledge the service

provided in these matters through the offices of the Sydney, Perth and Melbourne Deputy Crown Solicitors (as the offices were then described) and the Victorian Crown Solicitor. I will summarise the three major actions in which I was involved. In each case I indicate the general area of my investigation which was sought to be stopped by those proceedings. There were other interlocutory proceedings which did not proceed to full hearings. I will note those matters too.

Giannarelli

6.004 In June and July of 1981 I issued subpoenas to the managers of various branches of the National Bank of Australasia Ltd. (as it was then known) to produce records relating to Giuseppe Giannarelli and other members of his family. On 28th July 1982 an Order Nisi was sought on behalf of the family before Mr. Justice Crockett, of the Supreme Court of Victoria. An order was made that I show cause why I should not be prohibited from enquiring into the banking activities of the applicants. The Order Nisi was returnable on 31st July 1981.

6.005 Guiseppe Giannarelli stated in the affidavit in support of his application for the Order Nisi that he had had "nothing to do with the Federated Ship Painters and Dockers Union". The State Crown Solicitors Office in Melbourne undertook the defence of this matter. It was sought to set aside the affidavit on the basis that it was misleading. There was an abundance of evidence linking Giannarelli directly with the Union. The matter came on for preliminary argument on 31st July when Crockett J. indicated it was apparent on the material there had been a lack of candour on the part of Giannarelli. The matter was adjourned for a substantive hearing to 3rd August 1981 when

Giannarelli withdrew the application. The delay to my investigations caused by the issue of these proceedings was thus short.

Ross and Heap

6.006 By the end of 1981 I had commenced investigating what were later shown to be "bottom of the harbour" tax avoidance schemes. In the course of those investigations it was my intention to examine certain transactions involving the J.S. Heap group of companies. In October and November 1981 subpoenas were issued requiring Mr. Heap to attend to give evidence and produce documents. During the course of his evidence Heap indicated that he had relied heavily on the advice of his accountant Ross. Ross then appeared to give evidence. A statement was made by senior counsel assisting me that he was considering making submissions that Heap had been involved in a conspiracy, the effect of which was to breach Section 67 of the Companies Act. This statement was made on 17th February 1982. On the following day a submission was made on behalf of Ross and Heap that such an enquiry would be beyond the terms of reference. I rejected those submissions in a ruling made in March 1982.

6.007 Thereupon Ross and Heap sought under the Administrative Decisions (Judicial Review) Act 1977 a review of that "ruling" and of my decision to summons and question various witnesses in relation to their affairs. They sought interlocutory injunctions to restrain me from proceeding. The application for interlocutory relief was dismissed in the Federal Court on 19th April 1982 by Ellicot J.. (This matter has been reported as Ross -v- Costigan [1982] 41 ALR 319). The parties appealed that decision to the Full Federal Court. That appeal was dismissed on 12th May 1982. (The appeal was reported as Ross -v- Costigan [No. 2] [1982] 41 ALR 337). Subsequently a notice of motion was filed on

30th July 1982 seeking special leave to appeal to the High Court from the judgment of the Full Court. No further action however was taken by the applicants.

6.008 The effect of the action taken by the parties was to delay my investigation of their affairs from March 1982 until July of that year. By then I had submitted my Fourth Interim Report which concluded my substantive investigations into the tax fraud matters. The investigation into the particular matter involving Heap and Ross was therefore not completed. As it was, however, merely representative of a huge number of similar transactions - as I was later to become aware - the delay was not fatal to my investigations.

Faint

6.009 On 16th September 1982 Lloyd Errol Faint appeared in sittings of the Commission held in Brisbane. It was intended to examine him in relation to various matters including Faint's involvement in tax schemes which, in turn, were thought to involve members of the Union. A claim was made on his behalf that he be entitled to refuse to answer on the basis of the privilege against self-incrimination. I delivered a written ruling pursuant to which I ordered the witness to answer certain questions. On 26th October 1982 a writ was issued in the High Court by Faint seeking declarations that I had no power to compel him to answer questions because of the privilege against self-incrimination and further that the questions were outside my terms of reference. On 3rd November 1982 I undertook not to require Faint to answer any questions until such time as pending criminal proceedings involving matters of similar compass had been finally disposed of. Those proceedings are still pending and as a result my undertaking

still stands. Faint's claims for declarations remain in abeyance and will be rendered abortive on return of my letters patent.

Boyden

6.010 On 21st October 1982 John Arthur Prideaux Boyden gave evidence before me in sittings in Melbourne. This evidence related to his involvement in the Hamidan matter and his employment by the company Transia. His evidence was part-heard and adjourned to 26th October to Perth. On the latter day Boyden objected to answer further questions on the grounds that those answers might incriminate him. I directed him to answer but adjourned the further hearing of his evidence for 7 days to enable him to take whatever action he might be advised.

6.011 On 29th October Boyden sought from the Federal Court in New South Wales an order for review of those decisions. That application was heard ex-parte in the Federal Court by Mr. Justice Lockhart on 2nd November 1982 and an interim injunction was obtained restraining me from requiring Boyden to comply with his subpoena until 5th November. On the adjourned date the court was advised that I would not require Boyden to comply with the subpoena until 17th December 1982. In early December Boyden was charged with various offences by the Queensland Fraud Squad. The Federal Court proceedings came on before Lockhart J. on 17th December when I undertook not to require Boyden to answer any questions or produce documents until the charges pending against him had been disposed of or other order made. Those charges remain pending. Boyden has since been committed for trial in Brisbane but the trial is not expected to take place until 1985. There has obviously been a substantial and fatal delay in completing examination of Boyden. This however was not caused by the Federal Court proceedings but

by the issue of criminal charges against Boyden in early December 1982. I would have, in any event, ceased to allow Boyden to be examined once charges had been laid.

Huston

6.012 Huston was a Brisbane accountant who was examined in relation to his association with the company Hamidan and the directorate thereof. He gave evidence in Melbourne and Brisbane on various dates in October, 1982, concluding on 14th October. On 15th October 1982 he was arrested by the Queensland Fraud Squad and charged with various offences involving the matters that I was then investigating. Following discussions between his solicitors and counsel and the solicitor instructing the Commission I undertook on 22nd November 1982 not to take any evidence from Huston in relation to the charges being faced.

6.013 On 26th November 1982 the solicitors for Huston requested an undertaking that I refrain from calling evidence from other witnesses involved in the Hamidan matter in any manner which might prejudice the hearing of the criminal charges. On 29th November I indicated I would take no steps which would prejudice the fair hearing of charges against Huston but I did propose to take evidence from other witnesses on a number of matters, some of which related to Hamidan. I indicated that that evidence would be taken in private sittings of the Commission.

6.014 On 6th December 1982 hearings of the Commission resumed in Perth. On 8th December 1982 Huston lodged in the Federal Court an application for an order to review my ruling that I would be proceeding with the hearings. In particular it was sought to restrain me from receiving any evidence which might have the effect of proving that Huston was guilty of any offence for which he already stood charged. An interim order in those terms was

made by Mr. Justice Toohey operative until 4.30 pm on 9th December. The matter came on before His Honour on the following day. By then I had given an undertaking that it was my intention to hear the relevant evidence in confidence. The court accepted this undertaking, despite argument to the contrary from Huston's counsel, and the application was accordingly resolved. (This matter has been reported as Huston -v- Costigan [1982] 45 ALR 559)

Peter Lloyd

6.015 Peter Lloyd was subpoenaed to appear to give evidence and to produce documents. He appeared during hearings in Perth on 26th-27th October 1982 but failed to produce all the documents in his possession as required. Lloyd was a solicitor in practice in the firm of Dwyer & Thomas in Perth. He was to be examined about the part played by his firm in the affairs of Hamidan and others.

6.016 On 10th December 1982 Lloyd made application under the Administrative Decisions (Judicial Review) Act 1977 for a review of my decision to require him to give evidence and produce documents. That application was based on legal and professional privilege and the alleged irrelevance of the evidence required. At a preliminary directions hearing on 20th December dates were set for mutual discovery, the filing of affidavits and the hearing proper. The order requiring discovery was subsequently vacated and contested questions relating to discovery were litigated on 11th February 1983. The substantive application was set down for hearing on 2nd March 1983.

6.017 In response to an affidavit filed by the solicitor to the Commission on 7th February 1983 Lloyd filed a notice of motion proposing that the Commission's affidavit be struck out. This notice of motion was dismissed by Mr. Justice Toohey in the Federal Court on 23rd February 1983.

6.018 On 12th April 1983 Lloyd was advised by the solicitors acting on my behalf of a desire to have the final hearing dates fixed. On 15th April 1983 a notice of appeal was lodged in respect of the decision by Mr. Justice Toohey to dismiss the notice of motion. On 21st April 1983 Lloyd gave notice of his intention to file a written submission in support of the appeal. The appeal was heard on 4th May 1983 by the Full Court of the Federal Court and was dismissed by a judgment of 9th May 1983.

6.019 On 10th May 1983 Lloyd requested a statement under Section 13 (1) of the A.D.J.R. Act. I sought a date for hearing on the issue of discovery and the substantive matters. On 20th May such an application was made and the final hearing was fixed for 14th July 1983. On 26th June Lloyd applied to vacate the given hearing date and to set another date for argument on the question of interrogatories. This interlocutory application was dismissed by a judgment of Mr. Justice Toohey on 6th July 1983 (reported in a note at (1984) 50 ALR 665 at 681).

6.020 The substantive matters were heard on 14th and 15th July 1983 by Mr. Justice Toohey in the Federal Court. (Lloyd -v- Costigan [1983] 48 ALR 241). Lloyd's application against me was dismissed, he appealed against this decision and the appeal was heard on 11th October 1983. On the following day the appeal was dismissed. (The appeal was reported as Lloyd -v- Costigan [1984] 53 ALR 402). On 26th October 1983 I caused Lloyd to be advised that, in view of the fact that charges had since been laid against him, the Commission would not require his attendance until those proceedings were concluded. As at the date of writing my Report I understand that those proceedings are still pending. The effect of Lloyd's activities in the Federal Court were such as to prevent his examination being concluded at any time between October 1982 and October 1983

when he had exhausted the appeal process (save for the High Court). The effective delay was of 12 month's duration prior to becoming aware that proceedings had been issued against him, thus negating the original subpoena.

Ray, Packer and Ors

6.021 On 4th and 5th October 1983 Brian Ray, James Baker, Ian Beames and other witnesses gave evidence concerning business dealings involving Kerry Packer. On 6th October 1983 Mr. A.B. Shand QC sought leave to appear on behalf of Mr. Ray. At the end of the proceedings on that day Mr. Shand made a statement on behalf of Mr. Packer indicating that Packer was willing to assist me in my enquiries and would appear without summons if required when he returned from overseas in approximately 14 days. Subpoenas were issued for hearings to be held on 2nd November 1983. These required the attendance of Messrs. Baker, Ray and Beames. Subpoenas were also directed to Mr. Packer and Ian Harper a partner in the firm of Allen Allen & Hemsley solicitors who had been acting for Mr. Packer.

6.022 On 18th October 1983 Allen Allen & Hemsley wrote to the Commission confirming they would accept service of the summons which had been issued in respect of Mr. Packer. They queried the relevance of a line of questioning which involved the transactions of Mr. Ray and Mr. Packer. On 26th October 1983 they advised they would seek judicial review of any decision of mine if "questions (were) put to him (Mr. Packer) when he appears before the Commission..that are regarded by those advising him as irrelevant." By letter dated 27th October 1983 the solicitors were advised that my enquiries were broad ones relating to various banking transactions and were not to be regarded as making allegations against any particular person.

6.023 By 1st November 1983 it appeared that the letter dated 27th October written at my direction to the solicitors had not been received by them. On that date they wrote advising that their client Packer was aggrieved by the decision requiring him to appear and produce documents. They therefore sought a statement pursuant to Section 13 of the Administration Decisions Judicial Review Act 1977 setting out the findings I had made and the basis on which the subpoenas had been issued. A similar "application" was received from Mr. Ray's solicitors on the same day.

6.024 On 2nd November 1983 Mr. Hughes QC appeared for Mr. Packer. An opportunity was sought to issue proceedings pursuant to Section 13 of the Administrative Decisions Judicial Review Act seeking the reasons and material facts upon which the subpoenas had been issued. I adjourned sine die to consider the submissions put by counsel. On 4th December I gave my ruling in relation to these submissions. I refused to furnish a statement requested under Section 13. I indicated that if proceedings were issued in respect of the matter I would make a "statement of fact" available in a sealed envelope to the Federal Court.

6.025 On 7th November seven applications were filed in the Federal Court of Australia (New South Wales Registry) for orders to review pursuant to the ADJR Act. The applicants were Packer, Ray, Beames, Baker, Harper, McWilliam and Jones. The latter three were partners in the firm of Allen Allen & Hemsley. The applicants sought orders for a statement pursuant to Section 13. The proceedings commenced before Mr. Justice Morling on 8th November 1983. The judgment dismissing the applications was delivered on 16th November 1983. (See Harper -v- Costigan [1983] 50 ALR 665). The applicants thereupon appealed to the Full Court of the Federal Court. A hearing date for the appeal was fixed

as a matter of urgency for December but the appeals were subsequently discontinued by the appellants.

6.026 I cannot leave this particular topic without referring to the further incident which occurred in December 1983 which was in my view an attempt to bring influence to bear upon my investigations. I dealt with this matter in a public session of the Commission on 21st December 1983. The following is portion of the statement I made on that day. It speaks for itself:-

"My attention has been drawn to a question asked of the Queensland Premier and the answer given, in the Parliament of Queensland last Thursday and Friday, 15 and 16 December. For the sake of complete accuracy I have arranged for copies of each to be procured.

The Question was:

"(1) Is he (that is the Premier) aware that allegations have been made by Mr Frank Costigan in recent Federal Court proceedings in Sydney that the Comalco House Branch of the Bank of New South Wales (now Westpac) was used in 1980 and 1981 by the Painters' and Dockers' Union to finance drug transactions in the State?

(2) Has he made any enquiries regarding these allegations and if so, what was the result of such enquiries?"

The Answer given by the Premier was:

"I am aware of these allegations and have made inquiries of the Police Department. The Queensland Police have no knowledge of any painter and docker involvement in drug trafficking in this State, nor do the Queensland Police have any knowledge or information which would suggest that the Comalco House Branch of the then Bank of New South Wales was used to finance drug trafficking in this State. The Queensland Police have co-operated extensively with the Costigan Royal Commission. At no time, however, have these allegations or matters relating to them been raised with

the Queensland Police. I am most concerned that the serious allegations concerning our State would be made without their first being raised with the Queensland Police.

I do not wish to add to the public controversy concerning several public figures currently in dispute with Mr Costigan, but I am concerned that allegations which on their face appear to be without basis would be made by Mr Costigan, particularly when they are calculated to cause serious damage to the reputations of such public figures."

In the course of the answer the Premier refers to "several public figures". He does not specify who they may be, but I assume he speaks of Messrs Packer, Ray and their associates, all of whom are witnesses currently before this Commission and who may be, at least in some cases, regarded as "public figures". I assume further that the "allegations" to which the Premier refers is an understanding, on his part, that my investigations which led to the calling of those witnesses were directed at exploring the avenues by which major drug importations are being financed.

The history of the matter is of short compass. Whilst the object of the investigation was to determine the financing of the drug transactions, the staff of the Commission went to some pains to conceal that purpose in the questioning of witnesses. This was achieved by exploring cash transactions of a substantial character at the relevant branches of the Bank of New South Wales, by seeking explanations for them and then checking those explanations. No "allegations" were put, for the Commission was investigating, not putting a case.

The situation was reached where certain large payments of cash were found to have been made at the request of Mr Ray. Counsel sought an explanation for those payments and found that the cash had been paid to Mr Packer, and that there were two quite different reasons given for it. Mr

Packer's version is now sought. It may be, or it may not be, that the payments are related to drug transactions: that remains to be seen.

In the normal course, the purpose of the enquiry would not have been publicly revealed. Mr Ray's counsel made a private enquiry of the purpose from Mr Meagher QC, and was told privately. Then Mr Packer's solicitors, in writing, sought the same information. They were referred to Mr Ray's counsel, but not being satisfied with that, they demanded an explanation in writing. With reluctance, borne out of a desire to maintain a low level of publicity until the explanations had been given and examined, but not out of any desire to deny knowledge of the nature of the enquiry to the witnesses, a letter was forwarded to Mr Packer's solicitors explaining the purpose.

Subsequently, Mr Packer, Mr Ray and a number of other witnesses took proceedings in the Federal Court, attempting to compel me to explain not only the purpose of the enquiry, but also to reveal all of the information on which it was based. I was not prepared to do that, for reasons I have already given, and the Federal Court refused to intervene. In the course of those proceedings, the Commission's letter to Mr Packer's solicitors was exhibited. It was unnecessary for it to be publicised in those proceedings, it being available for the Judge and all parties to read. Indeed, throughout those proceedings, although the letter was averted to frequently, its contents were not read until Mr Ray's counsel addressed the Court. Even in his case, it was not read until the second day. By that time all present in the Court well knew its contents. Notwithstanding that, Mr Ray's counsel insisted on reading it aloud so that it may then be publicised, as it was. I had no part of this, and, indeed, had indicated my desire that it not be made public. The Premier is in error in suggesting that I have made public allegations in the Federal Court. Further, he is in error in suggesting I have made "allegations", whether public or otherwise. The letter indicates the

purpose of the investigations. So far as Messrs Packer, Ray and the other witnesses in that group are concerned, it makes no allegations and I make none: I merely seek explanations....The Premier has not written or spoken to me about these matters. If his concern is not abated by my remarks today, and he seeks further information, then I would be happy to explain to him, confidentially, for fear of prejudicing my investigation, the basis of my enquiries. These are not matters for public debate, nor are they matters where I expect to be subjected to uninformed comment in Parliament by the holder of the highest political office in that state."

(Transcript, p. 17672a-17675)

6.027 By the time the Federal Court proceedings had concluded the Christmas period had arrived. I was unable to plan any further hearings in relation to this matter until the new year. For reasons which appear elsewhere in this Report I was unable to call Mr. Packer for further examination prior to the conclusions of my operational phase at the end of June 1984. The proceedings taken on behalf of Mr. Packer and his associates had the effect of delaying the possibility of further hearings for some months.

6.028 On 28 September 1984, Mr. Packer issued a press statement. In it, he canvassed various matters then said to be circulating publicly regarding his alleged involvement in criminal activities. The contents of that statement are discussed earlier in this volume. In the course of it, he made the following statements:

"The allegations published about me in a recent edition of the National Times are, without exception, completely false. Their publication has been but another step in a malicious and disgusting campaign of vilification by my commercial rivals. In

developing these allegations the Royal Commission into the Ship Painters and Dockers Union has conducted itself grossly unjustly and improperly...

...These innuendos and allegations emanating from the inquiries of the Royal Commission have caused immense suffering on the part of my wife and children for nearly a year. They have been fuelled by what I believe has been malicious rumour and innuendo in newspapers controlled by commercial rivals of mine, John Fairfax and Sons Limited...

...Far from there being any particular closeness between my company and the solicitor (who also had a substantial shareholding in the listed company) there were serious disagreements about the conduct of the company's business. There was a well publicised takeover bid in which Consolidated Press and the solicitor's interest were on opposing sides. Whatever the Royal Commission's relations with the National Times may be, it is clear that its staff does not read its sister publication, the Financial Review."

The clear implication of these allegations is that I was involved, in some clandestine way, with business rivals of Mr. Packer in a scheme to discredit him. I reject the suggestion as absurd. I instance the suggestion as another attempt, on the face of it, to influence the manner in which I conduct my Commission; in particular, to influence the contents of my Final Report and recommendations.

The Result

6.029 Thus, the defences of the major actions have been completely successful. Those who represented me are to be congratulated on the manner in which they conducted the proceedings. There has been in each case a vindication of my stance, and an endorsement of my interpretation of the terms of reference. But a price has been paid. Inevitably

there have been long delays in matters being finally resolved (in each of the three major matters appeals were issued). Ultimately, it was good tactics for the various litigants to test my rulings. In one case I was unable to recall the principal witness as by the time he had exhausted the appeal process he had been charged with offences arising out of the matters I was investigating.

CHAPTER 7 - PREVIOUS RECOMMENDATIONS

"Say not the struggle nought availeth,
The labour and the wounds are vain,
The enemy faints not, nor faileth,
And as things have been, they
remain."

A.H. Clough, Say not the
Struggle Nought Availeth

7.001 In the course of earlier reports I made a number of formal recommendations for legislative, executive and other action. In this Report I have made a number of further recommendations, which are collected for ease of reference in Chapter 9 of this volume. As some of these new matters are extensions of previous proposals, it is useful to set out in this chapter those early recommendations, together with, where appropriate, some note of the known response thereto. For the sake of clarity I have set out the recommendations in bold type and underlined.

7.002 My first two interim reports delivered in March and June of 1981 made no specific recommendations requiring legislative action. The reports did contain information relating to the state of my investigations and, together with discussions which took place with ministerial and departmental officers, presumably provided the basis for the extension of my term from the original 30 September 1981 until 31 December 1982; of course, that date was subsequently extended until 31 October 1984. Additionally, from time to time informal recommendations have been made which need not be the subject of discussion here. They were on day-to-day matters relating to administrative and operational control. Naturally some of them were of great importance, particularly those dealing with the acquisition and development of the computer facilities.

INTERIM REPORT NO. 3

7.003 By December 1981 I had commenced investigations into the "bottom of the harbour" area. I was frustrated in my attempt to obtain information from the Taxation Office because of the provisions of section 16 of the Income Tax Assessment Act. I detailed the stage which my investigation had then reached in submitting Interim Report no. 3 in which I made the following recommendations:-

"That Section 16 of the Income Tax Assessment Act be amended as follows:

(a) That sub-section (1) be amended by inserting after the word "State": the words 'not being a person appointed pursuant to the Royal Commissions Act.'

(b) That Section 16 (4) of the Income Tax Assessment Act be amended by adding to it an additional sub-clause (j) as follows:

(j) any person to whom a Commission has been issued by the Governor-General pursuant to the Royal Commissions Act where the terms of Reference in specific terms to this Act."

(Interim Report No.3, p. 17)

This was a limited amendment to deal with the particular problem. I noted that a consequent amendment would be required to the terms of my Commonwealth Commission by adding the words:-

"or has engaged in illegal activities in relation to the Income Tax Assessment Act."

(ibid)

7.004 The Government of the day met the substance of my recommendations. The terms of my Commission were enlarged as from 1 April 1982. The definition of "illegal activities" contained in the amended terms was considerably wider than it had been. Clearly included within the definition was involvement in tax frauds and the like.

7.005 I had recommended that all Royal Commissions get access to tax documents. The actual amendment to the Income Tax Assessment Act, which was to operate from 2 June 1982, restricted access to tax documents to my Commission and to the Stewart Commission. It envisaged that further Royal Commissions would get the same access if a "declaration" was made under the appropriate sub-section. The amended section severely restricted "the communication use" that could be made of the information obtained. It could not, for example, be passed on to any person outside the Commission save in limited circumstances. Despite these restrictions it was nonetheless a valuable response to my recommendation and greatly assisted in the continuing investigation which was to lead, in due course, to the successful conclusion of some of the matters which were the subject of my next report.

INTERIM REPORT NO. 4

7.006 In Interim Report No. 4, which was submitted in July 1982, I referred to the use to which I had been able to put the amendments made to section 16 as a result of my previous recommendations. I also pointed out in Chapter 2 of Volume 1 of that report the limitations which I saw to the effective use of the new power. I set these out in some detail to indicate the basis for the further recommendations which I regarded as desirable. The recommendations were in the following terms:-

1. That Section 16 be amended so as to allow the Australian Taxation Office to brief the Treasurer and the Attorney-General fully, and in such detail as may identify taxpayers, and information supplied by them to the Taxation Office. This may be readily achieved by the repeal of sub-section 5A of Section 16, and the addition of each Minister to the list of authorised recipients of information in sub-section 4.
2. That Section 16 be amended so as to allow Royal Commissions who are given access to taxation files to use the information obtained publicly despite the fact that individual taxpayers may thereby be identified.
3. That all law enforcement agencies be allowed access to information in possession of the Australian Taxation Office for the purposes of criminal investigation.

This may be effected by the addition of Chief Commissioners of Police of each police force and the Commissioners of Corporate Affairs in each State to list of authorised recipients in sub-section 4 of Section 16.
4. That a taxpayer be entitled to access to information he has conveyed to the Australian Taxation Office.

This may be effected by the addition of taxpayers to the list of authorised recipients in sub-section 4 of Section 16.
5. That information supplied by a taxpayer to the Australian Taxation Office be available on subpoena issued by any Court in Australia on it being relevant to any civil or criminal proceeding before the Court.

This would require the repeal of sub-section 3 of Section 16, and the addition of Courts of law to the list of authorised recipients in sub-section 4 of Section 16.

(Interim Report No. 4, Vol 1, p. 6 - 8)

As I understand the position, the basic thrust of these recommendations has not been accepted by Government or, for that matter, the Taxation Office. As I said in my earlier report it was no secret that the Taxation Office rejected my recommendations and resisted them. It was clear that the subsequent and wider proposals received the same response. Nonetheless I commend them to Government for further consideration.

7.007 The same report had dealt with my findings in respect of tax fraud. For reasons which I discussed in that report I recommended that there be a task force with the responsibility of enforcing the laws relating to the perpetration of the tax frauds. I recommended that this force have the responsibility of issuing civil proceedings where appropriate in respect of tax frauds. The precise recommendation was in the following terms:-

(b) It is my recommendation that a Task Force be formed consisting of counsel, solicitors, investigators and administrative staff to act on behalf of the Commonwealth and the several States in the criminal and civil actions available to punish those who have perpetrated the fraud, and to recover the revenue lost.

(Interim Report No. 4, Vol 1, p. 8)

The response by Government to this recommendation was to pass legislation creating the Office of the Special Prosecutors and thereafter to appoint Mr R.V. Gyles Q.C. as a Special Prosecutor with the responsibility for targetting and prosecuting the perpetrators of the tax fraud and collecting the taxes. Also in my Interim Report I dealt with STRATEGIES (see Volume 2) for the fight against organised crime. I recommended - although this was not formulated in precise terms - that there be a "Commission" with the responsibility throughout Australia for such a fight. I recommended that body have a "prosecuting arm" although preferably slightly distanced therefrom. The Special Prosecutor legislation also was a response, as I understand it, to that recommendation. The appointment of Mr Robert Redlich of the Victorian Bar as Special Prosecutor to prosecute matters arising from my investigations other than bottom of the harbour matters was consistent with that understanding. It is probably appropriate to say here that the legislation introduced by the Federal Government in 1982 for a National Crimes Commission was also in response to the matters set out in my reports and, in particular, the STRATEGIES. Although the legislation for the National Crimes Commission was not entirely consistent with my suggestions, nevertheless it was a positive response. The subsequent history of that legislation and the replacement of the Commission by the National Crime Authority have been examined in other reports and documents. I will not repeat those matters here.

7.008 In Interim Report No. 4 I also made a recommendation that a Royal Commissioner have power to issue a search warrant. The recommendation was as follows:-

- (c) It is my recommendation that a Royal Commissioner should have the power to issue a search warrant where he believes on reasonable grounds that a person has documents relevant to the terms of reference of the Commission and there is a reasonable likelihood of the destruction of the documents. There are cases where the mere service of a subpoena to produce documents will, if the person has something to conceal, result in the destruction and non-production of the documents. The subpoena in fact acts as a warning to such a person of the Commission's interest. I would expect that such a power would be exercised only on rare occasions, but it should be there.

(Interim Report No. 4, Vol 1, p. 8-9)

By the Royal Commissions Amendment Act 1982, which was proclaimed to come into operation on 1 February 1983, the Royal Commissions Act was amended to provide, pursuant to section 4 thereof, for search warrants. My recommendation had been that the Royal Commissioner be entitled to issue the warrant. The response of Government was to make available a process whereby the Commissioner could apply to a Judge of a prescribed court for the issue of such a warrant on establishing appropriate grounds. Although this procedure meant there would inevitably be some delay in obtaining a warrant, nevertheless it was regarded as a favourable response to the recommendation. I have applied, through Counsel, on six occasions since the introduction of the legislation for the issue of warrants. In each case, the application was granted and a total of eight warrants issued. It has proved a valuable adjunct to the power of a Royal Commissioner.

7.009 In the same report I made recommendations relating to compulsion of witnesses. The recommendations were in the following terms.

Compulsion of Witnesses

The Royal Commissions Act has quite inadequate powers and penalties to enforce the attendance of witnesses and the answering of questions. The Victorian Evidence Act in contrast provides efficient and speedy methods.

It is my strong recommendation that the Royal Commissions Act be amended to provide procedures and remedies similar to those in the Evidence Act. Recourse to the Federal Court would be appropriate.

(Interim Report No. 4, Vol 1, p. 9)

The Royal Commissions Amendment Act 1982 amended the provisions dealing with the appearance of witnesses both to give evidence and to produce documents. It included appropriate penalties for failure to comply with the subpoenas.

INTERIM REPORT NO. 5

7.010 My Fifth Interim report was submitted to Government in July 1983. It was the result of a lengthy investigation into the company Hamidan Pty. Ltd. and its various officers. The Report consisted of three separate volumes. Volume 3, in two parts, contained a full and detailed analysis of the activities of the company, being the justification for recommendations, and the recommendations themselves. It consisted of 450 pages. Volume 2 of the Report was a shorter version, being a summary of the same matters with the name of the company and of the principal officers involved disguised. The purpose of this "sanitized" version was to enable it to be published. My own view was that Volume 3 could have been

published but I was conscious that differing views were held as to the effect that publication might have on the subsequent trial of the various offenders who were named. Volume 1 of the Report also contained a copy of the recommendations, but stated baldly without any attempted justification of them.

7.011 The recommendations relating to the Hamidan matter consisted of some 13 pages. I have had a little response from Government Departments in respect of some of them. As at June of this year I was unsure as to the precise state of the recommendations and the progress of the Government's response. I was concerned to include in my final report a summary of my previous recommendations, setting out the action taken by Government to date. I had not heard formally from Government in relation to these matters although a statement had been made by the Commonwealth Attorney-General in relation to them. He said:-

"The Government is examining the recommendations that are summarised in volume 1. Relevant Commonwealth Departments, in consultation with the states and the Northern Territory where necessary, will complete their studies of the report and make recommendations as to action on it within three months. If the Government decides that legislative action will be necessary, it will provide information as to the reasons drawing on relevant information that has been provided by the Royal Commission."

(Commonwealth Parliamentary Debates,
Senate, 12th October 1983, 1470)

7.012 As I had not heard in respect of a number of those matters contained in Interim Report No. 5, I caused a letter to be written by the Secretary of the Commission to the Secretary of the Department of Prime Minister and Cabinet. This letter was dated 1 June 1984 and, formal parts omitted, read as follows.

"The Royal Commissioner, Mr. Frank Costigan, will shortly be compiling his final report.

Over the three and a half years of the Commission's life there has been a number of interim reports containing recommendations to Government on various matters that have arisen from the Commission's investigations.

For the purpose of the final report, it would be of great assistance to have details of action taken by the Government in response to the recommendations contained in the earlier reports.

I would be grateful if you could meet this request. An early response would be greatly appreciated."

7.013 A reply was received to that letter on 2 July 1984 from the first assistant secretary, Justice Division. This letter read as follows:-

"Your memorandum of 1 June 1984 sought details of action taken by the Government in response to the recommendations contained in the reports of the Royal Commission on the Activities of Federated Ship Painters and Dockers Union.

In broad terms, those reports revealed considerable deficiencies in the machinery of government and the administration of legislation, although many of these matters were not the subject of specific recommendations by the Commission. Both this Government and its predecessor took well-publicised action to deal with the major administrative and legal problems identified by the Commission, including the amendment of legislation, the appointment of Special Prosecutors and the establishment of a permanent body to deal with the problem of complex, organised crime.

In addition, the Commission made a number of more specific recommendations. The examination of these recommendations has involved extensive consultation between Ministers and departments, some of which is still proceeding and consequential Cabinet consideration. Any material provided to the Commission about these matters should properly receive endorsement and approval from Ministers, who ultimately have the responsibility for action taken by the Government in response to the Commission's findings.

For this reason, should it be wished to obtain details of the action taken on the more specific recommendations made by the Commission, it would be desirable for the request to be addressed to the Prime Minister by the Royal Commissioner. In that event, identification of the particular conclusions and recommendations in respect of which information is sought and a more specific indication of the proposed use of the information would assist consideration of the request."

There was no further correspondence in respect of this matter. Set out below are the recommendations in respect of the Fifth Interim Report with, where appropriate, my comments.

Recommendations From Interim Report No. 5

7.014

Prosecutions

4.02 Little need be said under this heading. I have noted the institution of criminal proceedings against the principal conspirators by the Queensland Fraud Squad. Separately, charges by the Queensland Corporate Affairs Commission for breaches of the Companies Act are being prepared against these men and a number of the marketers of the Company's scheme. As I have indicated the closest liaison has been maintained with the Fraud

Squad, the National Companies & Securities Commission, the Special Prosecutor and Corporate Affairs Offices throughout Australia. A large number of Reserve Bank offences, Taxation offences, Bankruptcy offences, Corporate Affairs breaches and criminal offences have been identified. In most cases, I am informed by the responsible agencies, charges will be preferred. It is likely that at least 15 men will face criminal charges. The actual charges laid will depend, in the exercise of a proper prosecutorial discretion in each case, on a proper use of the resources available to prepare appropriate briefs and to have matters listed in an orderly fashion in the different jurisdictions.

4.03 I need make no specific recommendations as to prosecutions to be laid as, if I may say so with respect, these matters are being catered for adequately in the course of liaison with the Special Prosecutor and the other bodies. Indeed, one of the very satisfying aspects of my Commission has been the close association which has developed with law enforcement agencies throughout Australia. I have liberally interpreted the provisions of Section 6P of the Royal Commissions Act. I have communicated information in my possession relating to an offence, or possible offence, to appropriate authorities on an almost daily basis.

4.04 One matter I draw attention to is the difficulties of coordinating prosecutions where more than one government's laws have been breached. The conspiracy prosecutions launched by the Queensland Fraud Squad have many common threads with the prosecutions undertaken and being prepared by the Special Prosecutor. Unfortunately, there is a duplication of effort from time to time in overlapping areas. There is some competition for access to the original documentary evidence held by this Commission. In any proposals for the establishment of a Commonwealth Director of Criminal Prosecutions, I recommend special attention be given to the role of

coordination with State agencies. In particular, more emphasis should be given to joint Federal/State prosecutions where offences against the laws of both are involved. This will, no doubt, depend upon the level of cooperation that can be negotiated with the States, probably on a case-to-case basis. However, I believe it will be an important function of the Director to obtain, with appropriate assistance, a proper degree of cooperation.

Prosecutions are proceeding in Queensland where, following committal proceedings, four men will face trial. I understand that proceedings are on foot in Western Australia in respect of various men identified as participating generally in this scheme. These proceedings have been subject to various interlocutory matters which have delayed the conclusion of committals. I understand that these prosecutions are being conducted by the Office of the Director of Public Prosecutions which has taken them over from Special Prosecutor Redlich. The only other matter I would draw attention to under this heading is to the civil recovery aspect of the work of the Director of Public Prosecutions. I believe, consistently with my recommendations in the Fourth Interim report, that the Director should have the capacity to take proceedings for recovery of civil debts due to the Commonwealth. The structure of the Act as at present operating is such as to severely limit his right to take such action. It is presently dependant upon the institution of a prosecution and the publishing of an appropriate instrument by the Attorney-General dealing with the particular matter or a class of matters. This is clearly unsatisfactory. There will be many cases, as there already have been, where the Director needs to take civil action prior to being in a position to initiate his criminal prosecution. The Act should be amended to take account of this need. The work done by Special Prosecutors Redlich and Gyles amply demonstrates the justification for it.

7.015

Exchange Controls

4.05 Under this heading I recommend as follows:-

- (1.) A notice be issued by the Treasurer pursuant to Section 39B (2) of the Banking Act adding Singapore to the schedule of countries in respect of which taxation clearances are required.
- (2.) Regulations be made under the Banking (Foreign Exchange) Regulations prescribing a form in respect of applications to the Reserve Bank for approval of agreements with non-residents. The form should make provision for the information presently required by the Bank. That information should be verified in writing by the applicant and, in the case of a company, by an officer personally responsible for its truth. The form should contain a warning that provision of incorrect information to the Bank is punishable by severe penalty. The Regulations should provide that no overseas agreement will be approved unless a written document embodying the terms of that agreement executed by the parties is submitted, prior to any liabilities being incurred by the parties. This agreement, of course, should be stated to be subject to the Reserve Bank approval.
- (3.) The applicant should state in his form whether he and/or the company borrowing the money is related in any way to the offshore entity. He should specifically state whether shares in the offshore company are in any way beneficially held on his behalf in a trust or nominee situation.

- (4.) The Reserve Bank should record in a central registry system the names of all overseas lenders, as well as the Australian borrowers. When an application is lodged, automatic checks of previous applications in respect of the same parties should be made to identify similar transactions.
- (5.) To facilitate the setting up of a central registry, the Reserve Bank should install a computer system. There should be access to the central registry through the computer from each of the branches of the bank throughout Australia.
- (6.) All applications made to the Reserve Bank which are regarded as suspect should be immediately referred to the Taxation Office and, if appropriate, to the Federal Police for further investigation.
- (7.) I recommend a minimum holding period from lodgement of an application until approval for say, 7 days; no application should be lodged between 15th and 30th June in any year.

These requirements were significantly affected by the Government's abolition of restrictions on money flows out of the country.

7.016

Tax Controls

4.06 I recommend as follows:-

- (1.) Where a scheme is being promoted which is claimed to have, as any part of its attraction, tax advantages for the investor or contributor then the following provisions should apply:-

- (a) The promoter shall obtain from the National Companies & Securities Commission a certificate which certifies that the method of marketing the scheme, in the form submitted to the Commission satisfies the requirements of the Companies Act and the Securities Industries Act in all States in respect of which promotion is to take place.
- (b) The promoter shall obtain from the Commissioner of Taxation a certificate stating that -
- I Notice of the scheme has been given to the Taxation Office.
 - II Such notice was given on or before the 31st day of May in the financial year in respect of which any deduction is to be claimed.
 - III Copy of the NCSC certificate (together with all of the material relied upon to obtain the same) has been provided to the Taxation Office.
 - IV That it is likely that a deduction will be granted in respect of the proposed scheme if it is implemented strictly in accordance with the proposals put forward.
- (c) The promoter shall obtain the necessary documents prior to promotion of the scheme to any person (whether by way of limited offer or otherwise) and provide to every such person:
- I Copies of the material submitted to NCSC and the Commissioner of Taxation.
 - II Copies of the certificates obtained from those bodies.

(d) The claim for the deduction by the taxpayer shall not be allowed unless.

I The abovementioned requirements have been met.

II The taxpayer states in his claim for the deduction that, in respect of his own participation, the proposals for the scheme and the promotion of it have been carried out by the promoter.

(e) The promoter, or any person with whom he is associated in the promotion of the scheme, shall not accept any funds from the investor unless copies of the materials set out in sub-paragraph (c) hereof have been provided to the investor prior to such receipt.

(f) Breaches of these provisions shall render:-

I Any agreement entered into in respect of a scheme null and void.

II The promoters liable to refund in full any monies paid pursuant to such an agreement, together with interest at a rate of 5% greater than the bank rate prevailing at the date of deposit of the monies.

III The promoter liable to heavy financial penalties and moderately severe gaol sentences.

(2.) Where a scheme has been promoted in breach of the provisions of Company and Security law, the Commissioner of Taxation shall forthwith refer all of the papers to the NCSC, and the NCSC shall investigate the matter to determine whether prosecution for breach of the laws it administers should be initiated.

- (3.) Where an application is made to the National Companies & Securities Commission for a certificate pursuant to paragraph 1 (a) above, that Commission shall forthwith give notice of the application to the Commissioner of Taxation.
- (4.) Consideration should be given to the licensing of promoters of tax schemes. Any such licensing should only be held by private individuals who are Australian nationals and/or residents. The class of people eligible should be restricted to persons with appropriate qualifications and of good reputation.
- (5.) Section 16 of the Income Tax Assessment Act should be further amended to allow notice to be given by the Taxation Commissioner to any appropriate law enforcement body of any activities suspected to be illegal of which the Commissioner or his officers become aware during the course of his normal duties.

There has been no consultation between my Commission and the Taxation Office or any other Government Department in respect of those recommendations. I am not aware of any step taken to implement any of them. I have had some contact with the National Companies and Securities Commission in respect of my recommendations generally. Its officers understood sub-paragraph 3 to require the NCSC to become an arm of the Taxation Office. This was not in my contemplation as I explained to senior officers of the NCSC. I was pleased to read in the media in early September 1984 the decision of the Ministerial Council to include details of tax correspondence or rulings in any prospectus issued by a company where tax benefits were claimed. I was disappointed to find, when conducting those discussions, that the office of the NCSC had not had made available to it a full edition of Interim Report No. 5. It meant that it had considered my reports completely in isolation to the

case history which had justified the recommendations in the first place. I might say that this situation was not limited to the NCSC. In no case did it appear that any body that was required to consider my recommendations had had made available to it the full text of the report on which they were based. This totally ignored the final recommendation in that report (see below).

7.017

Corporation Controls

4.07 I recommend:-

- (1.) Computerisation of the Corporate Affairs records on a national basis should be implemented as a matter of urgency. The system adopted should allow for access to the following information:-
 - (a) Name of company officers.
 - (b) Address of company officers.
 - (c) Address of registered offices.
 - (d) Listing of all companies with which a person is associated in any way.
- (2.) Notice should be given to the Corporate Affairs Commission by all company officers of all offices held by them in all companies, and all companies in which they are beneficially entitled to some or all of the issued shares.
- (3.) The names of shareholders of companies should at all times be advised to the Corporate Affairs Office. This list should be maintained up-to-date. Any change of shareholding should be notified within 14 days. Any later attempt to notify a change of shareholding should be rejected save on application to the court. The register should show whether the shares are held on a beneficial or nominee basis. In the event that they are held on a nominee basis

then the name of beneficial shareholder should also be advised to the Corporate Affairs Office. If not so advised then that shareholding should not be recognised in law for any purpose.

(4.) Each officer of a company be required by law to provide a written statement containing the information set out below. This form should be signed personally and witnessed. It should be witnessed by the person responsible for lodgement of the document at the office of the Corporate Affairs Commission. That person should also be identified in any document lodged. If the document is lodged personally by an officer then it should be witnessed by an officer of the Corporate Affairs Commission at the time of lodgement. The statement should contain, inter alia, the following details:-

- (a) The full name currently being used by that person.
- (b) The name under which the person was born.
- (c) The date and place of birth.
- (d) Any other name used between the date of birth and the date of the statement.
- (e) Whether the person is or has been a taxpayer and, if appropriate-
 - (I) The name under which he lodged his last return.
 - (II) The place of lodgement.
 - (III) The taxation number allocated to him.
- (f) His current address and any address used by him as his principal place of business or residence during the previous 5 years.

In this area I did have useful discussions with the Commissioner of Corporate Affairs in Victoria and the Attorney-General for the State of Victoria and officers of Corporate Affairs. I also discussed the matters with officers of the NCSC. I understand that some of the recommendations I have made are to be incorporated into a new computerised system to be established. According to media reports in early September 1984, the "disclosure" provisions recommended by me in paragraph 3 above have been accepted by the Ministerial Council. Nevertheless, I have been gratified at the response by the State authorities. I have had no contact with offices of Corporate Affairs of other States. Presumably the Commonwealth Government has brought these matters to the attention of other States.

7.018

Banking Controls

4.08 I recommend:-

- (1.) Each person applying to open a bank account be required by law to provide a written statement containing the information set out below. This form should be signed personally and witnessed by the bank officer opening the account. The statement should contain, inter alia, the following details:-
 - (a) The full name currently being used by that person.
 - (b) The name under which the person was born.
 - (c) The date and place of birth.
 - (d) Any other name used between the date of birth and the date of the statement.
 - (e) Whether the person is or has been a taxpayer and, if appropriate-

- (I) The name under which he lodged his last return.
 - (II) The place of lodgement.
 - (III) The taxation number allocated to him.
 - (f) His current address and any address used by him as his principal place of business or residence during the previous 5 years.
- (2.) The legislation should provide appropriate penalties for making a false statement. Banks tend to require proof of incorporation of companies before opening accounts. The law should demand they obtain such proof. The statement of personal particulars should be supplied by all proposed signatories for the account. If a banker fails to obtain the appropriate statements then it should be subject to severe financial penalties. The same provision should also apply to the use of accounts in business names or in the names of trusts.
- (3.) In conjunction with (2), similar legislation dealing with all financial institutions be negotiated - as appropriate - with State Governments.
- (4.) Every applicant to a bank or other financial institution seeking the remission of funds overseas should be identified on a record to be kept of that transaction. This should then be forwarded to the Reserve Bank to be included on a computerised record of all overseas transactions.
- (5.) Banking records, including all vouchers, should be retained by the banks for a minimum period of seven years. In the event originals of such documents are released to a customer, then copies of any such documents including endorsements appearing thereon should be made and likewise retained.

I have received no response from Government to these proposals. I am aware that similar proposals have been made by Mr Justice Stewart and by Special Prosecutor Robert Redlich when reporting to Government. I am also aware, from media reports, that the banks are opposed to the provisions. They are particularly opposed to being given any role whereby they are to "police" the activities of their customers. There is much evidence which supports the recommendations I have made both in Interim Report No. 5 and in other reports submitted by me and, in particular, this Report. In fact, I have repeated the recommendations as to banking controls in Volume 4 of this Report. I have mentioned other instances of facilitating fraud through banks. I believe that these controls should be implemented.

7.019

Mining Permits

4.09 I recommend:-

- (1.) Commonwealth and State petroleum exploration legislation be amended to provide that no agreement between parties affecting an interest in a permit (including any personal covenant thereunder) is of any affect until approval and registration of that agreement pursuant to the legislation. The right of a prospective party to claim damages against the existing permittee - where that party's default has led to the non-registration of the interest - should be preserved.
- (2.) It be compulsory for an existing permittee to advise the Minister of any agreement entered into which will affect the interests in the permit. Failure to so advise the Minister within an appropriate time period should result in the loss of the permit by the permittee.

- (3.) Consideration be given to a proposal that where it is intended to attract investment from the public in a permit area any agreement in respect of the same which is intended to be the basis of such investment should be registered with the Mines Department prior to any promotion of the proposed venture.
- (4.) In conjunction with paragraph (3), that legislation provide that no person shall offer for sale or assignment any interest or sub-interest in a permit unless an agreement between the permittee and the proposed vendor or promoter of the sale had been lodged and registered with the Mines Department and a certificate of the Minister as to such registration is produced to any such interested purchaser or contributor prior to any such sale or assignment.
- (5.) This Report be brought to the attention of the appropriate Commonwealth and Western Australian State Ministers responsible for petroleum and oil exploration.

I have had no reponse from Government in respect of these recommendations.

7.020

Overseas Arrangements

4.10 I recommend:-

- (1.) Consideration should be given to treating "loans" made in the tax haven countries to Australian residents as direct income unless a certificate under Section 14C of the Tax Administration Act has issued in respect of that transaction.

- (2.) Section 14D of the Tax Administration Act should be amended to include as a ground on which the issue of a certificate should be refused, the likelihood that creditors of the applicant in Australia will be prejudiced by the issue of the certificate.
- (3.) Consultations take place with foreign governments with a view to facilitating the admissibility of evidence in Australia of banking and other financial transactions offshore. Within Australia, there should be provision for the admissibility in civil and criminal proceedings of such financial documentary evidence from overseas provided the same bears a bankers certificate as to its authenticity and a certificate from the local Australian representative in the country in question as to the production of the documents to it for safe carriage.
- (4.) Australia should confer with interested international organisations and other countries and plan an improved cooperation in exchange of information regarding use by criminals of havens and, generally, the "offshore" criminal problem. If a National Crimes Commission is established in Australia, it should play a leading role in liaising with various overseas bodies (in cooperation with and subject to Foreign Affairs Department responsibilities) in respect of such cooperation.
- (5.) The Australian Government should negotiate with as many countries as possible, particularly those in the Pacific region, the access to banking records in those countries.

I regarded these recommendations as particularly important. I have had no discussions from Government as to them. I am aware that officers attached to the Special Prosecutor Redlich travelled to Singapore and Hong Kong to obtain evidence in respect of the criminal activities referred to in Interim Report No. 5. They were able to obtain documents, and other evidence, in their visit to Hong Kong. They were not so able in Singapore. Urgent arrangements must be made with these and other countries to facilitate the acceptability of foreign banking records as evidence before the Australian courts. The United States Courts have apparently taken the view that the national interest in investigating crime justifies overriding secrecy laws of other countries in some circumstances:-

"As Investigations of white-collar crime lead increasingly to banks and companies abroad, US courts are concluding the need for information over-rides other countries' secrecy laws.

A subpoena, US judges ruled recently, is sometimes enough to force release of sensitive bank and corporate documents offshore, if the subpoena is served on US soil.

In the past, US prosecutors could obtain such records only through diplomatic procedures, in part because judges have been reluctant to override the laws of foreign lands by enforcing subpoenas. US Authorities say the trend gives them new and effective tools for cracking cases involving drugs, money laundering and tax evasion, but many investors and corporations which operate offshore fear it may lead to investigations into offshore records.

It also threatens countries which have become business havens because of their secrecy laws...

In addition to the courts, the US Government is moving to penetrate offshore bank secrecy."

(Financial Review, 27th July 1984)

Previous Recommendations

I commend these views to Government. The current difficulty in presenting admissible evidence to the Western Australian courts in prosecutions being conducted by the D.P.P. provide ample demonstration of the need for international liaison in this area.

7.021 In this area, reference can usefully be made to a Memorandum and paper prepared by the Commonwealth Secretariat for presentation to the Commonwealth Law Ministers at its meeting in Sri Lanka in February 1983. The documents were entitled Mutual Assistance in Criminal Matters: A Commonwealth Perspective. In discussing the possible options for the development of mutual assistance in criminal matters within the Commonwealth particular attention was give in the papers to the special problems involved in the investigation and prosecution of commercial crime. This approach has been adopted because of the complex issues which can often arise in this area and the fact that commercial crime increasingly has an international dimension. Greater efforts should be made to obtain better international cooperation in this field. I urge that the level of Australian participation in and support of this part of the programme of the Commonwealth Secretariat be enhanced.

7.022

Conclusions

4.11 I recommend that this Report have a wide referral within Government and, in particular, that it be referred to law enforcement agencies - both State and Federal - throughout Australia for information purposes.

Previous Recommendations

None of the representatives of Government agencies with whom I have spoken had had access to volumes 2 or 3 of my Report. I presume the basis on which Government did not publish those volumes was that such publication may have affected the subsequent prosecution of the offenders referred to therein. That should not have effected the proposed distribution I suggested. It was my view that there should be a wide distribution of the reports throughout Australia, not just to Government departments, but to the community generally. It was for the Government to decide whether that was appropriate. I recommend it be done.

"We are better able to study our
neighbours than ourselves, and their
actions than our own."

Aristotle, Nicomachean Ethics

8.001 There has been criticism of Royal Commissions that prosecutions and convictions have not followed investigations. Thus Commissions are administered to act only on "admissible" evidence; that is, evidence admissible in a court of law on the trial of a particular offender. This misinterprets the nature of the investigative role of the Commission. The very fact that it obtains evidence from offenders, by way of oral testimony or documents extracted by coercive powers, demonstrates - given the anathema with which any attempt to erode the concept of "no self-incrimination" is regarded - the futility of this stance. Evidence taken from offenders is not admissible. The Royal Commission Act makes this clear; so does the Victorian Evidence Act; so does the High Court. Whatever "evidence" is obtained of criminal activity must still remain the subject of critical prosecutorial examination to ensure it is sufficient to justify putting a person on trial. As a matter of principle, I have adopted the practice of referring matters to other bodies for the final investigative process leading to the arrest, charge and prosecution.

8.002 I have referred to my recommendations for a "task force" to prosecute the perpetrators of the "bottom of the harbour" schemes and for "a prosecuting arm" to assist (Crime) Commissions. As a response to those recommendations, the Special Prosecutors Act was enacted and Messrs Gyles and Redlich were appointed to prosecute tax and other matters identified by my Commission's work. Mr Redlich was later given the additional responsibility of prosecuting matters referred by the Stewart Commission. I will later refer to some matters prosecuted by the offices of the Special Prosecutors on my referral.

8.003 Another initiative emerged from my work. From the time my investigations commenced I received information of many criminal activities. Some required investigation to establish whether they fell within my terms of reference. Occasionally, they did not. Again, on many occasions there were matters which fell within my terms but which were better investigated by other bodies; in some cases, by a coordinated group using the computer facilities of the Commission. It was necessary to obtain some executive imprimatur for this modus operandi. In many cases the matters were of insufficient importance to justify formal reports. To obviate this problem, an amendment to the Royal Commissions Act was enacted in the form of Section 6 P which came into operation on 1 February 1983 (it was subsequently amended to take into account the introduction of the

National Crime Authority). This Section provided:-

"Where, in the course of inquiring into a matter, a Commission obtains information that relates, or that may relate, to the commission of an offence, or evidence of the commission of an offence, against a law of the Commonwealth, of a State or of a Territory, the Commission may, if in the opinion of the Commission it is appropriate so to do, communicate the information or furnish the evidence, as the case may be, to -

- (a) the Attorney-General of the Commonwealth, of a State or of the Northern Territory;
- (b) the National Crimes Commission established by the National Crimes Commission Act 1982;
- (c) a Special Prosecutor appointed under the Special Prosecutors Act 1982;
- (d) the Commissioner of the Australian Federal Police or of the Police Force of a State or of the Northern Territory; or
- (e) the authority or person responsible for the administration or enforcement of that law."

I exercised the discretion liberally. It provided the legislative power enabling much of the cooperative work undertaken in the latter half of my term.

8.004 The deliberate dissemination of information in accordance with provisions of the Act, met with the approval of Government. The Attorney-General made the following remarks during a Parliamentary speech in October 1983.

"The Costigan Commission is investigating organised criminal activities on a very broad front. On last count - depending

on how one defines them - it had between a dozen and 20 major separate investigations proceeding, all of them linked in some way to the original painters and dockers reference, but in some cases the link is pretty marginal. But clearly they are a wide-ranging set of investigations. The Costigan Commission, secondly, is producing reports to government, most recently last week, one volume of which was tabled but accompanied by massive and detailed evidence of very far reaching and alarming criminal fraud in one State. The Costigan Commission is generating prosecutions. Six people have already been charged in relation to the particular matter in respect of which the report was produced to government last week, and many others are being prosecuted as a result of the efforts of Special prosecutors Gyles and Redlich, whose task has been to implement the recommendations and the prosecutorial implications of the Costigan Commission Inquiry. The Costigan Commission is supplying further information to law enforcement and other agencies around the country which has been and continues to be enormously helpful in tightening up the systems as they are operating and the procedures as they are applying, in removing loopholes and avoiding future problems with the criminal law.

(Commonwealth Parliamentary Debates,
Senate, 18th October 1983, p. 1650)

Cost Effectiveness

"We do what we can, and then make a theory to prove our performance the best."

Emerson, Journals (1834)

8.005 One of the other areas where a justification for Royal Commissions is sometimes sought is in the area of cost effectiveness. Why this should be so is puzzling. That the suppression of crime, or the attempt, should be measured in money terms is doubtful. It is difficult

to measure the work of a Commission by reference to balance sheet considerations. In earlier reports I referred to some areas of criminal activity which were suppressed by my investigations; some examples were fraud on the Social Security system, workers' compensation fraud and "ghosting". Attempts were made to quantify the savings generated.

8.006 In the course of the preparation of my fifth Interim Report, I indicated the savings to the community by the attack on the tax industry. Even this enquiry was complicated and imprecise. There had been attacks by others besides my Commission - for example, Government legislation and the McCabe-LaFranchi investigation. Moreover, how should one measure the financial savings resulting from the suppression of such schemes. The gain may be measured in hundreds of millions of dollars per annum.

8.007 With some hesitation, I requested the Commissioner of Taxation to advise me of tax assessments issued as a result of information provided by the Commission. He supplied those details. They were minimum figures, and did not include cases which were still under investigation and for which no assessment had issued, or cases where the Department had already commenced investigations and the information provided by the Commission served to supplement or confirm existing material; the latter category would include a number of bottom of the harbour schemes considered by Special Prosecutor, Roger Gyles QC.

8.008 The figures were illuminating. The number of taxpayers satisfying the minimum test referred to above in respect of whom assessments had issued (to July 1983) as a direct result of the Commission's activities was 676; the amount of tax assessed (including additional tax) was \$25,009,302.00.

8.009 To place this figure in perspective, the cost of the Commission was approximately \$12,000,000.

8.010 The gross tax recoveries have increased significantly during the ensuing 15 months. I note the recent report of Special Prosecutor Gyles,

"...working in tandem with..the Taxation Office has identified 6206 companies involved in bottom of the harbour schemes. The crackdown has netted the Government \$333M...about \$257M remains to be collected."

(Sydney Morning Herald 15th August 1984)

It was reported the Special Prosecutor expected to charge 150 of "the major promoters" before he stepped down in September 1984. Further in his report to the Attorney-General for the year ended 30 June 1984 Special Prosecutor Gyles stated:-

"...To the end of the current year 3171 profiles of persons and entities involved in company stripping other than simply as principals of companies stripped had been compiled. They participated in the company stripping industry in various ways.

After the initial collation approximately 150 of the persons were identified as high priority targets. That number has since increased significantly. In the meantime the Australian Taxation Office estimate of the number of companies stripped has been increased by more than 50% - the latest estimate is over 6,000 compared with the original estimate of something over 4,000."

(Annual Report (1984) p.2)

Bottom of the Harbour

8.011 In his first annual report, for the period 22 September 1982 to 30 June 1983, Mr Gyles set out the sources of his information. It included the Australian Taxation Office, Police Forces, the McCabe and LaFranchi Report, Corporate Affairs Commissions, the National Companies and Securities Commission and my Commission. Of my Commission he said:-

"The continuing enquiries of the Royal Commissioner have spanned the activities of several promoters and a great volume of documentary material and other information has been made available to me. My office has computer terminal access to portion of the Commission data base. There is active liaison with the Royal Commissioner and his staff."

(Annual Report [1983], p. 4)

8.012 Under the heading of Operational Progress, Mr Gyles dealt with the institution of proceedings to the date of his report:-

"Following advice from counsel retained prior to my appointment, a prosecution was initiated in Western Australia by a police officer attached to my office

against Brian James Maher and Lloyd Errol Faint of Queensland and William Henry Tolhurst of Western Australia. The charges, under s. 86 [1](e) of the Commonwealth Crimes Act, 1914, relate to an alleged conspiracy to defraud the Commonwealth during 1973 in relation to several companies including Stirling Court [1973] Pty Ltd. This was the Perth case identified by the Costigan Royal Commission. Members of the task force did the further work which was advised by counsel to be necessary for prosecution. The three defendants were arrested on 29th October 1982 by members of the task force...This case is not sufficient on its own to represent the alleged activities of Maher and his associates, accordingly teams within my office are currently examining a range of additional matters involving those persons".

(Annual Report [1983] p. 8)

There have been many developments in these prosecutions since the presentation of the report. They are matters on which Mr. Gyles has reported directly to Government.

8.013 Mr Gyles made some general comments in his first report dealing with the new role of the Special Prosecutor (since subsumed by the office of the Director of Public Prosecutions). He said:-

"My appointment was due to the exposure of failure by the authorities to deal with what appeared to be a serious fraud on the revenue for many years - leading to public perception of gross incompetence, if not worse.

Hitherto the usual reaction to such situations in Australia has been to appoint a Royal Commission. In the case of my appointment, of course, the facts were disclosed by a Royal Commission.

Where such an operative event prima facie involves criminal activity, it will often be preferable to concentrate on rigorous investigation with a view to prosecution, rather than have an administrative enquiry - which is the nature of a Royal Commission, whether headed by a Judge or not. The Special Prosecutors Act thus provides a further option in dealing with cases involving investigations of corruption or gross incompetence amongst high politicians or administrators. In those cases I believe that the departures from normal tradition which the office involves are justified. It follows, of course, that the use of the office should be sparing.

(Annual Report [1983] p. 11)

8.014 Mr Gyles, in his second report in June 1984,
said:

"The Commissioner of Taxation has estimated that commission earned by the promoters and their associates in relation to current year profit companies was in the vicinity of \$150 million. If the stripping of undistributed profits, trust stripping, purported "Curran" and "Westraders" schemes, and various other tax avoidance schemes were taken into account, the figure would be very much higher. The revenue foregone runs into billions of dollars.

Tax avoidance and evasion of this kind in such volume is extraordinary in absolute terms but almost incredible in relative terms having regard to the small Australian economy. It has recently been reported that the largest United States revenue fraud case ever brought is being heard - it involved \$US48 million. The two committals currently being heard involve revenue loss of well over \$200 million.

When sums such as these are involved, special and extraordinary measures are called for. The fact that these may cause administrative disruption and the expenditure of significant sums of money should be no barrier to effective action. If there had been an adequate administrative, judicial, and political response in the first place the situation would never have arisen. Even on the narrowest view of cost benefit, the expenditure would be justified. When the wider ramifications for the effective and efficient conduct of tax administration are taken into account, the cost will be recovered many times over. The gross excesses of the tax avoidance industry in the 1970's should never have occurred and should never be repeated. It is simply not good enough to fail to cleanse the Augean (sic) stables because the task is too dirty and difficult....

It will be apparent from the foregoing that whilst I anticipate that a number of other persons will be charged before the expiration of my term of office there will be a number of investigations which will not have reached that point. Furthermore, even in cases which are before the courts, follow-up investigations will be necessary. The magnitude of the task has proved to be beyond the resources available within the time given to me. I estimate that a further 12 months beyond September will be necessary in order to adequately investigate what I have called the inner circle of promoters and their principal associates. By that time, all appropriate charges against this group should be laid. That will then leave the litigation to run its course."

(Annual Report [1984] p. 9-10)

8.015 In a schedule Mr Gyles listed 167 matters in various stages of prosecution. That list represents prosecution of 32 major promoters and other functionaries involved in "Bottom of the Harbour Schemes".

The credit for those promotions rest with Mr Gyles. But in the exposure of the schemes, much credit must go to Messrs McCabe and LaFranchi with their successful investigation of the Maher group. There is little doubt the matters would not have proceeded to prosecution, however, without the publicity and pressure which followed my report on the same matters. Mr Gyles indicated that some 127 charges, pursuant to the Crimes (Taxation Offences) Act have or will be laid against a further 27 individuals. Warrants of arrest have been taken out in respect of four other offenders. In addition there is a great number of cases involving other defendants still being investigated by his office.

Other Tax Offenders

8.016 I have provided the Commissioner of Taxation with much information relating to tax evaders other than those involved in schemes investigated by Special Prosecutor Gyles. This has been directly responsible for assessments of many millions of dollars. These evaders come from various walks of life including painters and dockers, the professions, undertakers and S.P. bookmakers. With S.P. bookmakers my operations have been particularly successful. In one case an assessment of some \$2.4 million was levied. The secrecy provisions of the taxation legislation renders it impossible to report the actual benefit to the community recovered taxation. I can say it amounts to many millions of dollars.

Redlich Prosecutions

8.017 In the report of Special Prosecutor Redlich of 7 September 1984 were listed prosecutions. Of those matters referred by my Commission he said:-

"The work of the Costigan Royal Commission has been of inestimable public benefit. It has generated a public awareness about the type of criminal activities which threaten our society, and provided the momentum and foundation for the creation of an effective National Crimes Authority.

The terms of my initial appointment to deal with matters from this Commission have been fully described in Chapter 3 of my 1982-83 Annual Report. I was required to institute and carry on prosecutions with respect to "alleged illegal activities" identified by the Costigan Royal Commission and to take, co-ordinate or supervise the taking of civil remedies on behalf of the Commonwealth and its authorities in respect to such illegal activities. Pursuant to my brief from the Victorian Government I was also required to advise the Victorian Director of Public Prosecutions and the Attorney-General in respect to Victorian offences identified by the Costigan Royal Commission.

There has been close consultation with the Royal Commission about the disposition of the activities described in the Royal Commissioner's first four Interim Reports to Government. The Royal Commissioner and I agreed upon how these matters should be dealt with. The Attorney-General was consulted and concurred in the course proposed.

I reported to Parliament in 1982-83 that, inclusive of Interim Report No. 4, the Royal Commissioner had informed the Government about 52 areas of illegal activity, but that the Royal

Commissioner's reports were only designed to inform the Government as to the state of his investigations, (paragraphs 3.7 and 3.21 of 1982-83 Report). The Royal Commissioner had not in the main made "findings" upon which prosecutions could be based.

Prosecutions will flow from two of those matters and civil remedies will be exercised in respect to another four (paragraphs 3.22 of 1982-83 Report). Bearing in mind the purposes for which the first four Interim Reports were provided to Government by the Royal Commission, this result should not be surprising.

As previously adumbrated (paragraph 3.23 of 1982-83 Report), the matters referred to me by the Royal Commission, subsequent to Interim Report No.4, will all lead to prosecution. Since my 1982-83 Report, the Royal Commissioner has referred a further 7 matters to me, bringing the total number of matters referred to my office since Interim Report No.4 to 18. All of these matters are based on "hard facts" and have, or should, lead to the institution of prosecutions and in most cases the taking of civil proceedings.

Over 600 charges have been laid covering 12 different areas of illegal activities. Other charges are likely to be laid. Prosecutions have been successfully completed in 6 of those areas.

Summary of the more significant matters from the Costigan Royal Commission

The following is a summary of the illegal activities referred to my office by the Royal Commission which has required my detailed consideration. I have, for convenience, included those operational matters adverted to in my 1982-83 Annual Report which have been further developed since that time.

- (a) Bankrupt accountant with large tax liability operating companies

No tax returns lodged for many years

In my 1982-83 Annual Report I referred to an accountant who, despite his bankruptcy, had been able to control the affairs of many hundreds of companies, deal in very large sums of money and pay little or no income tax. A large income tax assessment involving many millions of dollars was levied against this person, and subsequently judgement was obtained in the amount of the debt. Execution in respect to that judgement has been an extremely difficult and complex matter, as the bankrupt's affairs are inextricably bound up in the affairs of many corporate entities which he controlled, or which were controlled on his behalf by persons who acted solely at his direction. The manner in which this person was able to manipulate the affairs of companies has been drawn to the attention of the Corporate Affairs Office.

I must express grave concern at the ease with which this person was able to abuse the corporate privilege and ensure that the benefits attaching to the concept of limited liability were utilised at all times. If companies with minimum (i.e. \$2.) subscription requirements are to remain acceptable, then the responsible authorities must more carefully monitor those who choose to abuse the privilege of incorporation and defraud creditors who will ultimately have little or no recourse for recovery.

- (b) Persons who lodged no returns for many years. Assessment raised of \$A3.5m. Judgement obtained \$A1.5m recovered.

This person, associated with the bankrupt referred to in the preceding paragraph, has been assessed as owing approximately \$A3.5m. Judgement had been obtained for approximately \$A1.3m. Judgement for the balance of that debt

has now been obtained and execution proceedings have progressed at a swift pace in the course of the past year. Approximately \$A1.5m has been recovered from this person, who is still refusing to re-enter the country for fear of her arrest by prosecution authorities as a consequence of her past activities. It is expected that the balance of the properties remaining for sale will result in the further recovery of approximately \$A1m.

(c) The backdating of family trusts to evade tax

In my 1982-83 Annual Report I described a scheme involving fraudulently backdated trust deeds to facilitate tax evasion for some 250 separate participants. A task force under my supervision and comprising Federal Police and Taxation officers, have now completed their investigations and laid charges. The promoters of the scheme, including a chartered accountant and tax consultant and employee accountants, have been charged with a conspiracy to defraud the Commissioner of Taxation. One of the conspirators has already pleaded guilty while committal proceedings are underway against the other conspirators. The substantial amounts of taxation evaded and the penalties imposed by the Taxation Department have now been paid by the participants involved.

At the direction of my office, funds controlled by the principal promoter and his family were garnisheed under the provisions of the Income Tax Assessment Act. This promoter is facing a number of criminal charges arising out of his participation in this and other schemes, but he has taken a number of legal steps to try and thwart the Commissioner of Taxation from recovering the income tax due. The Full Court of the Supreme Court of Queensland has held that the Commissioner of Taxation is entitled to require the promoter's solicitor to pay funds held in the Solicitor's trust account on behalf of his client to the

Commissioner of Taxation, pursuant to the provisions of s.218 of the Act, notwithstanding that those funds are held on account of that client for payment of prospective legal costs. The High Court of Australia held that the Commissioner of Taxation is entitled to a reasonable time in which to issue an assessment to the promoter and that if that person has conducted his or her affairs in a complicated manner, the length of time to which the Commissioner is entitled to determine that issue is likely to be greater. The decision in each case represents a significant step forward for the Commissioner in dealing with persons who participate in criminal activities and then attempt to rely upon procedural issues to defeat the Commissioner's attempts to collect income tax owed by those persons. Each Court refused to accept that the promoter and his family were acting in good faith and denied them relief on the various issues.

(d) Bankrupt solicitor conducting tax evasion scheme

A former Queensland solicitor and undischarged bankrupt has been investigated for his participation in a substantial tax evasion scheme. A large number of charges under the Bankruptcy Act 1966 have been laid arising from activity whilst an undischarged bankrupt. The charges are to be heard in August.

(e) Telecom technician aiding SP bookmaker. Prosecution completed

Operation Zebra, a Victorian Police task force, prepared a brief to prosecute a telecom technician for his involvement in the provision of an illegal telephone service to an S.P. operator. He was convicted of the appropriate offence under the Telecommunications Act and sentenced to four months' imprisonment. He subsequently appealed against the severity of the sentence to the County Court. The appeal was dismissed. The Judge stated in the course of the appeal

that the appellant, who had a number of serious prior convictions, should not have been employed in such a position.

(f) Contempt of and refusal to answer questions at the Royal Commission

A number of members of the Federated Ship Painters and Dockers Union refused to give sworn evidence before the Royal Commission in compliance with a resolution carried at a stop work meeting on 1 July 1981, not to co-operate with the Royal Commission. Substantive and conspiracy charges were laid and returnable at the Melbourne Magistrates' Court in December 1983, but were eventually adjourned until April 1984. The conspiracy charge was, on my recommendation, withdrawn before the charges were heard. Three of the defendants were required to re-appear before the Commission and refused to answer questions in relation to another matter. They were subsequently charged with contempt of the Royal Commission in relation to their conduct on this second occasion. All proceedings commenced in the Melbourne Magistrates' Court on 21st May. On that day an application was made to the Magistrate to stay the proceedings on the grounds that an abuse of process was involved. The Magistrate refused the application but permitted the Defendants time to apply to the Supreme Court for a writ of Prohibition seeking a stay. The matter came on before Gobbo J. on 23rd May and concluded on 24th May when Gobbo J. refused the application. The abuse of process claimed by the Defendants related to the refusal by the Director of Public Prosecutions to grant the Defendants an indemnity in respect to the conspiracy charge which had been withdrawn. It was said by the Defendants that they would be prejudiced in the conduct of their defence of the substantive charges if they were not granted an indemnity. In refusing their application, Gobbo J. observed that a stay could not be secured merely because the person charged might incriminate himself on some other charge when giving

sworn evidence in answer to the charge he was facing. His Honour held that the time to ascertain an abuse of process is when, and only when, the second matter (the conspiracy) is proceeded with. The matter was then referred back to the Magistrate and the hearing continued. Proceedings are now part heard, the Magistrate having ruled on the 5th June 1984 that there was a case to answer on each charge.

(g) Commercial fraud by merchant bank

Included among the discrete matters referred to the Office of the Special Prosecutor, were those which could be grouped under the nomenclature of commercial fraud by a merchant bank. Various activities are under consideration and have now been inherited by the Director of Public Prosecutions. Some of the matters which are currently under investigation include a scheme to evade tax by allegedly trading in Commodity Futures Contracts together with a further scheme which made use of multiple bank accounts in false names in order to conceal or launder large sums of money. In many cases breaches of the Banking (Foreign Exchange) Regulations may have been committed.

Under my supervision a task force was formed comprising personnel from my office, the Australian Federal Police and the Australian Tax Office. In addition, close liaison was maintained with staff of the New South Wales Corporate Affairs Office. The Reserve Bank of Australia provided assistance as required. Search warrants were recently executed in New South Wales and the material is now under analysis.

(h) Fraudulent exploration scheme

In my 1982-83 Annual Report (paragraphs 3.14 at pp 18-20) I dealt with this investigation in some detail. The investigation has been completed; 220 Commonwealth offences have been identified, 80 charges having been laid

against 9 defendants; . 4 being chartered accountants and one a financier. Three committal proceedings have been set down for hearing at the Perth Magistrates' Court in July of this year with an anticipated duration of ten weeks. A large number of overseas witnesses will be required to attend.

In investigating this exploration scheme, the Royal Commission focused on the apparent fraud perpetrated on those members of the public who invested in this scheme. The task force under my management comprising Federal Police, Legal Officers and counsel directed attention to breaches of Commonwealth law.

A senior legal officer and two officers of the Federal Police spent approximately six weeks in Hong Kong and Singapore obtaining evidence relevant to the Commonwealth offences, and the offences committed in the State of Queensland.

Pursuant to a Letter of Request the Hong Kong Supreme Court permitted the examination of some 12 witnesses, including solicitors and representatives from different financial institutions in Hong Kong. By contrast, the Singaporean authorities refused to give effect to a Letter of Request which issued from the Perth Magistrates' Court in that access to records of Singaporean financial institutions was not permitted.

The Letter of Request did, however, enable my officers to obtain non-financial evidence. Four solicitors and five other witnesses were examined in a Singaporean subordinate Court. Statements were taken from other witnesses.

In other parts of this report I have considered specific problems that have arisen during the course of the investigation of this scheme.

This particular criminal enterprise has important implications for law

enforcement throughout the Commonwealth, which I have considered in some detail in Chapters 3 and 6. The uncovering of this illegal scheme and the preparation of prosecutions against those who promoted it, have occupied the attention of the Royal Commission, this office and members of the Federal Police for a very lengthy period. Because of the ingenuity of the promoters and the complexity of the scheme, protracted investigation and analysis was required to prepare these matters for prosecution. None of the prosecutions in relation to this scheme will be short. I anticipate that the best part of a year will be taken by our Superior Courts in dealing with trials arising out of these prosecutions.

Unfortunately this type of criminal enterprise, so enervating of law enforcement and the legal system, is becoming all too common. Careful consideration must now be given as to how law enforcement agencies and our legal system can best cope with this sinister challenge.

(j) Prosecution pending for kidnapping

Committal proceedings have been completed and the defendant is presently awaiting trial on two counts of kidnapping. Other activities of the Defendants are still under consideration. The defendant was identified by the Costigan Royal Commission as connected with 18 separate criminal activities spanning the last 14 years and was the subject of an inquiry by the Australian Taxation Office, resulting in the issue of assessments to this person. Taxation returns had been lodged by this person for a number of years showing "nil" income, and assessments were issued pursuant to s.167 of the Income Tax Assessment Act. Recovery action will be pursued by the Director of Legal Services.

(k) Alleged drug importer. Assessment raised. Injunction freezing assets and judgement for \$600,000 obtained.

The affairs of an alleged importer of drugs was referred to me by the Costigan Royal Commission. This person had only one legitimate source of income which he disclosed for taxation purposes. However, over a few short years he had accumulated substantial land holdings, as well as substantial personal property, which were held under at least five aliases and his own name in two states. At the time the matter was referred to me, fears were held that this person might be about to sell or encumber his assets and leave Australia with the proceeds. At my request tax assessments were raised. A member of my staff and an investigation officer from the Australian Taxation Office attended Royal Commission hearings at the invitation of the Royal Commission. Armed with material obtained from witnesses before the Royal Commission, and with the assistance of the Deputy Commonwealth Crown Solicitor's Office, application was made for, and an interlocutory injunction obtained, restraining the person from dealing with his assets. Judgement was later obtained for approximately \$600,000 in favour of the Deputy Commissioner of Taxation and steps are in train to realise assets to satisfy the judgement. This entire exercise was completed in less than four weeks. The criminal investigation has continued without disruption.

- (1) Bankrupt solicitor in company stripping activities. Assessment of \$500,000 raised recovery action instituted

A former solicitor, whilst bankrupt, engaged in company stripping activities on a large scale from which he earned substantial fees. After tracing the flow of funds it was established that he avoided his own taxation problems by not lodging returns, and concealing his assets by the use of several aliases. Assessments totalling approximately \$500,000 have been issued to this person and recovery action is being pursued.

- (m) Unpaid group tax. Prosecution pursuant to s.252(L)(j) and recovery action underway.

A company associated with persons connected with criminal activity referred to me by the Costigan Royal Commission went into liquidation, owing approximately \$50,000 to the Commissioner of Taxation for unpaid group tax instalment deductions. At my investigation the Deputy Commissioner (sic) of Taxation is considering action against the directors and the public officer, pursuant to s.252(L)(j) of the Income Tax Assessment Act, including action for the recovery of the tax instalment deductions made from employees' wages.

- (n) Tax evasion promoter. Assessment in excess of \$Alm raised.

My advice was sought by the Deputy Commissioner of Taxation in respect of an alleged conspiracy to defraud the Commissioner arising from a tax evasion scheme. As a result of my advice the major promoter of this scheme has now received assessments totalling approximately \$Alm and I have passed the conspiracy allegation to the Director of Public Prosecutions for his consideration.

- (o) Solicitors' fees off-shore. Assessment to be raised

Members of a firm of solicitors intimately involved in a fraudulent exploration scheme arranged for fees to be concealed in an off-shore trust. My office has co-ordinated the activities of the Tax Office and I anticipate the raising of assessments against these individuals.

- (p) False interest payments and investment claim. Assessments to be raised.

Certain investors in a fraudulent exploration scheme, with the assistance of their solicitors, not only sought to obtain large claims for deductions by

reason of their investment in the scheme, but also intended to make false claims for remittance of interest payments upon bogus loans obtained from overseas. Interest payments were made to assignees from the purported lender. The assignees were the trustees of trusts established overseas for the investors' benefit. My office has passed relevant information to the Australian Taxation Office for appropriate action. The Director of Public Prosecutions would exercise a number of civil remedies in this area were he given the ability to do so.

(q) Concealment of assets in web of trusts and companies. Assessments to be raised.

An accountant, while bankrupt, arranged for the establishment of a large network of overseas companies as part of a fraudulent exploration scheme. He made many overseas trips and concealed his own interest behind a network of companies and trusts. Staff from my office have been in close contact with investigators from the Australian Taxation Office in an attempt to unravel the web of companies and trusts and the flow of funds. My office has co-ordinated the investigations of the Australian Taxation Office with investigations by the Federal Police.

This person has many beneficial interests which, almost without exception, are concealed by the use of companies. The directors of those companies are his nominees, and the shareholders hold their shares in trust for him. Efforts have been made, not only to assist the Australian Taxation Office with raising assessments in accordance with his true income, but also to locate assets and trace the beneficial ownership of assets with a view to the ultimate recovery of tax assessed. This has been no easy task. It should now be completed by the Director of Public Prosecutions.

- (r) Commercial fraud investigation. Assessments in excess of \$A1 million.

Investigation of a taxpayer's affairs revealed a liability to the Australian Taxation Office in excess of \$A1m. The income was acquired by means of a number of commercial frauds, including sending companies to the bottom of the harbour, the acquisition of companies and subsequent syphoning off of company funds, insider trading on various stock exchanges, and the use of mining losses to convert otherwise profitable companies into loss companies. Investigations are continuing into possible Corporate, Reserve Bank, Crimes Act and Income Tax Assessment Act offences.

- (s) Laundrying of income. Investigation continuing.

The investigation of a merchant bank disclosed a number of individuals laundrying income through the operation of false bank accounts. Close liaison was maintained with the Australian Taxation Office to enable it to issue amended assessments against the taxpayers in question.

- (t) Investigation of a tax avoidance promoter. Assessments contemplated.

The affairs of a tax avoidance promoter came to the attention of this office, revealing that the promoter was involved in a number of tax avoidance schemes associated with at least 20 companies promoting fraudulent schemes. Numerous overseas transactions involving the promoter and/or one of his associated companies are currently being investigated. Crimes Act, Banking (Foreign Exchange) Regulations and Income Tax Assessment Act offences are being considered. A substantial taxation assessment is likely to be raised against the promoter in the near future by the Commissioner of Taxation.

- (u) Corporate commercial frauds, money laundering.

As a result of an investigation conducted by the Australian Federal Police, the affairs of a group of companies controlled by three individuals have been referred to this office. The individuals concerned have sought to defraud the Commonwealth of its revenue by means of laundering income, and the lodgement of deliberately misleading income tax returns. The investigations are continuing into a possible Crimes Act, Banking (Foreign Exchange) Regulations and Income Tax Assessment Act offences.

- (v) Defrauding of clients by a solicitor. Prosecution under way.

This office and the Victorian Police Fraud Squad have examined a number of transactions involving the affairs of a Victorian solicitor, whose practising certificate was cancelled by the Law Institute of Victoria. Following an investigation, 29 charges have been laid against the solicitor, including false accounting, obtaining financial advantage by deception, forgery, uttering and theft. The matter is still awaiting committal and trial.

- (w) Sales tax scheme involving sale of merchandise at artificially low market value. Board of review proceedings current.

In my 1982-83 Annual Report I outlined the activities of a group of car retailers who were involved in a scheme to evade sales tax. The principals in this particular scheme took out insurance against any possible sales tax liability, by employing "bottom of the harbour" techniques to strip the companies concerned. Following the assessment of sales tax with penalties by the Commission of Taxation, the principals lodged Notices of Objection against each of the assessments and the Commissioner is now awaiting the outcome

of some "representative cases", involving similar schemes, to be heard before the Taxation Board of Review.

In the meantime a task force is continuing to collect and examine the mass of evidence relating to the implementation of this particular type of scheme with a view of instituting proceedings for any offence which may have been committed under Sales Tax Law, Crimes Act 1914 and other Commonwealth legislation.

(x) Social security frauds. Prosecutions under way.

In my 1982-83 Annual Report I reported on investigations carried out by the Department of Social Security and the Royal Commission into a number of Social Security frauds by members of the Federated Ship Painters and Dockers Union. Of the 122 files referred to this office for further investigation and prosecution, 65 matters were not proceeded with for policy reasons, or because the amounts owing to the Department of Social Security were insubstantial and therefore could not justify the cost of civil recovery proceedings. The remaining 57 files have been referred to the Federal Police in four capital cities for prosecution. To date, two offenders have been convicted, another twelve have been charged and are awaiting trial, and the balance are still under investigation.

(y) Sickness and unemployment benefits under alias \$64,700 over paid.

A member of the Federated Ship Painters and Dockers Union was in receipt of social security benefits from mid 1975 until his arrest in September 1983. During the period from mid 1976 until his arrest, he also claimed, inter alia, sickness benefits, unemployment benefits and other supporting pensions under eight false names. This enabled him to defraud the Department of Social Security of \$64,694.47 in respect to 221

separate offences. He forged and uttered at least 33 income tax returns claiming entitlement to the refund of group tax deductions in respect to group certificates which were either unclaimed, or falsely obtained, relating to work carried out by persons purporting to be members of the Federated Ship Painters and Dockers Union. As a consequence of this activity, the person concerned was able to fraudulently obtain the sum of \$4,655.65 from the Taxation Office. Charged with 293 separate offences, the person was sentenced to imprisonment for four years, with a minimum of two and a half years to be served. He was also ordered to make reparation to the Commonwealth of Australia in the amounts above mentioned.

- (z) S.P. bookmaker equipment supplied by Telecom employee.

During the course of a raid on premises belonging to a particular S.P. bookmaker, Victorian Police discovered that sophisticated electronic equipment had been installed by the bookmaker to facilitate the conduct of his business. The distributor of this equipment was interviewed and admitted supplying, but not installing the equipment. He was an employee of Telecom who, from time to time, supplied Telecom with electronic equipment.

The distributor of the equipment admitted supplying electronic equipment to a person he later discovered to be an S.P. bookmaker. Investigation is continuing into these matters.

8.018 Some of those matters bear further comment. The bankrupt accountant referred to in paragraph (a) had judgment entered against him by the Commissioner of Taxation for \$5,530,812.28 on 8 September 1983. To date recovery proceedings have realized approximately \$400,000. Further assessments exceeding \$500,000 have been issued against a

number of his companies.

8.019 The members of the Federated Ship Painters and Dockers' Union referred to in paragraph (f) were convicted of all charges and fined. Those convicted of contempt were fined the maximum penalty.

8.020 The fraudulent exploration scheme referred to in paragraph (h) is a prime example of the type of commercial crime that has become common in our community. I add my support to Mr Redlich's comment that:-

"Unfortunately this type of criminal enterprise, so enervating of law enforcement and the legal system is becoming all too common. Careful consideration must now be given as to how law enforcement agencies and our legal system can best cope with this sinister challenge."

8.021 The person charged with kidnapping and other offences referred to by Mr Redlich in paragraph (j), has been referred to and investigated by the Australian Taxation Office. His current tax liability amounts to approximately \$190,000.

Other Prosecutions

8.022 It was my policy to disseminate information where it assisted in the detection of offenders. This resulted in numerous prosecutions. Many have not been finalized and so the defendants cannot be identified. Some of the bodies that have initiated legal proceedings or commenced investigations are:-

References

Attorney Generals' Department of Victoria
Australian Federal Police
Australian Taxation Office
Commissioner of Corporate Affairs,
(New South Wales)
Commissioner of Corporate Affairs, (Queensland)
Commissioner of Corporate Affairs, (Victoria)
Commissioner of Corporate Affairs,
(Western Australia)
National Companies and Securities Commission
Police Forces (Various)
Australia Public Service
Reserve Bank of Australia
Department of Social Security

Various joint task forces involving Australian Federal Police, State Police Forces and other specialists have been assisted. Amongst the more significant proceedings finalised are:-

Francis Kinsella

8.023 He had failed to appear in Brisbane in July 1974 to answer charges of possession of stolen property and attempted murder. In November 1981, as a result of Federal and State Police enquiries and following identification of him using a false name, he was extradited to Queensland to answer those charges.

Naval Dockyard Fraud

8.024 Eighteen members of the Federated Ship Painters and Dockers Union were convicted in 1981 in relation to forging and uttering Medical Certificates.

John Allan Wallace

8.025 Detected by Federal Police attached to my Commission as being in possession of heroin. He was convicted and imprisoned. Subsequently he was convicted of

a major drug trafficking offence and was imprisoned for six years.

Peter Wilfred King

8.026 The offender was a Ship Painter and Docker involved in frauds on the Australia Taxation Office with in preparation of some forty fraudulent returns. He was investigated by the Federal Police regarding frauds in claiming unemployment and sickness benefits under seven false names. Approximately \$64,000 was defrauded from the Department of Social Security and some \$4,500 from the Australian Taxation Office. He is referred to in paragraph (y) of Redlich's Report. He was charged with some 290 offences under the Crimes Act 1914. Two charges related to the theft of telephones and another to unlawful possession of a firearm. He pleaded guilty to all charges, was imprisoned for four years and ordered to repay the stolen moneys.

Donald Brooks Lockyer

8.027 In August 1983 he was convicted of offences under the Bankruptcy Act and he was imprisoned for six months. In October 1984 he was convicted of further offences and sentenced to 18 months imprisonment. He is awaiting trial on charges of conspiring to defraud the Commonwealth.

Russell Charles Meldrum

8.028 He came to notice as a result of enquiries in S.P. bookmaking operations in Victoria. He was convicted of breaching the Telecommunications Act and sentenced to four months imprisonment.

Outstanding Matters

8.029 Other substantial matters where investigations are proceeding and/or charges laid but have not been finalised include those summarised hereafter.

Australian Federal Police

8.030 Warrants issued with respect to forging and uttering false passports. Investigations regarding offences under the Passports Act, Social Security Act (some 100 matters involving \$300,000) Bankruptcy Act, Crimes Act and Taxation, Reserve Bank and Companies Legislation are currently underway. The Federal Police were also involved in various joint task forces investigating matters relating to drugs, currency offences and pornography. There are many investigations being carried out by this force on matters identified by my Commission. I have recently provided information to the Australian Taxation Office, which is working with this force, about major frauds by painters and dockers employed by a Sydney ship repair firm. These investigations involve "ghosting". The revenue has been defrauded of at least \$36,000. The same group are involved in Social Security and Workers Compensation fraud. One recent referral to this force deserves special mention. It involves the activities of the bankrupt accountant referred to in Paragraph (a) of Special Prosecutor Redlich's report. I have recommended the bankrupt and a dismissed bank manager and other associates be investigated with respect to possible offences arising out of their loan raising activities and offences under the Bankruptcy Act and Crimes Act.

Commissions of Corporate Affairs (Various States)

8.031 Numerous matters have been referred. The investigations are assisted by the Federal and State Police Forces. In New South Wales, at least three corporate structures are being investigated as well as many individuals. In Queensland, the operation of a large oil exploration scheme and other companies used in illegal tax avoidance schemes are under investigation. The Western Australian and Victorian Corporate Affairs Offices are investigating the affairs of companies involved in illegal tax avoidance schemes. Many charges have been and will be laid. The investigators are looking at company, crimes and security legislation offences. Numerous individuals have and will be charged with conspiracy. The National Companies and Securities Commission has been assisted in its investigations by my officers. I have recommended that the Commissioner of Corporate Affairs in Queensland investigate with a view to charging certain offenders with breaches of the Companies Code in relation to:-

- (a) the control and management by the accountant of companies in Queensland whilst a bankrupt;
- (b) the transfer of a debt of \$1.9 million from Company "A" to Company "B" in circumstances where it would be reasonably known that Company "B" would not be able to meet the debt, the result being that the bank then employing the dismissed bank manager was likely to be defrauded, and

Joint Task Forces

8.032 Information collected by my Commission has been of assistance to Federal/State Police task forces. Such a "task force" in Queensland charged ten people with drug-related offences.

State Police Forces

8.033 Assistance was provided to various state police forces in addition to specific matters that are referred for investigation and prosecution. In Queensland, four men are awaiting trial on charges of conspiracy to defraud the public with respect to an oil and gas exploration venture. A major SP bookmaker was arrested and is now awaiting trial in Queensland. Three Queenslanders were arrested and convicted on charges of selling dangerous drugs and have been imprisoned. I referred to the Queensland Police, the accountant and his associates mentioned in the previous paragraphs. I have recommended they be investigated with a view to:-

- (a) charging them with appropriate offences as a result of their share trading activities which resulted in substantial loss to the then Bank of New South Wales and a Brisbane sharebroking firm;

- (b) laying charges as a result of false statements made in relation to the granting of a bank loan of \$15,000 said falsely to be for home improvements; and
- (c) laying charges as a result of the discharge of loans amounting to \$175,000. The discharge of these loans was made in order to release shares held by the lenders as security, free from further encumbrance.

The Queensland Police are to investigate the dismissed bank manager following my referral. He allowed his employer bank to be defrauded of a sum in excess of \$100,000.

8.034 I have assisted the Victorian Police in a variety of investigations into such matters as fraud on a building society, murder, drug offences and SP operations. In respect of SP operations I have provided the Police with information, and material obtained by analysis and processing of documents collected during my investigations. As a result two ex-bank managers have been charged with criminal offences and two men have been charged with kidnapping. One has also been charged with sixteen counts of theft and common assault. I have passed on information relating to an ex-bankrupt/ex-solicitor who was subsequently charged with twenty-nine offences including forgeries, utterings, obtaining property and financial advantage by deception, false accounting, theft and procuring the execution of a valuable security.

Other Referrals

8.035 In the course of my enquiries, I have come into possession of information that referred to various professional bodies, Registrars and employers. Some of the more significant matters are:-

Attorney-General's Department (New South Wales):

Keith Knight:

As a result of certain false statements contained in his application for admission as a barrister, details of which I reported to the Attorney-General, this man's name was removed (by order of the Supreme Court) from the barristers roll. In August 1984, a fellow practitioner who supported Knight's application in circumstances which suggested he may have been a party to a deception was also reported but it was determined that no action be taken to charge him for mis-conduct.

A business man involved in illegal tax schemes and massive frauds upon the revenue has also been referred regarding his position as a Justice of the Peace.

This matter has not yet been determined.

Attorney-General's Department (Victoria):

Guy Keith Campbell:

Following an investigation of his affairs by me he was referred regarding his position as a Justice of the Peace. His commission was withdrawn.

Thomas Buckingham:

His commission as a Justice of the Peace was withdrawn with respect to malpractice in the execution of his duties.

Australian Society of Accountants:

Keith Knight was referred to the New South Wales branch following my investigation of his affairs and the failed merchant bank group of Ward Knight and Dunn Pty Ltd. In December 1982, he voluntarily withdrew from his membership of the Society and no longer practices as an accountant.

Banks

8.036 The activities of bank officers and their part in the furtherance of a range of illegal activities ranging from tax avoidance, illegal company dealings to SP bookmaking were serious matters. Action has been taken against some of the officers involved by both their employers and police forces. Banks showed a similiar complacency in regard to their staffs' activities as did some bank officers towards the illegal activities of their customers. The banks that took remedial action as a result of my investigations, were:-

(i) National Australia Bank

Enquiries revealed breaches of banking regulations. These involved false

bank accounts. Disciplinary action has been taken against at least three senior officers.

State Savings Bank of Victoria

As a result of Commission enquiries a bank manager was demoted, removed from his branch and denied the right for promotion of some two years. He elected to resign shortly thereafter. Some \$70-80,000 is still owed to the bank as a result of his illegal dealings. Supreme Court action to recover \$65,000 from a notorious SP bookmaker has commenced. A bank accountant was initially demoted following illegal activities identified by my enquiries. Subsequently it was discovered he had given himself a personal loan in a false name. No payments were made. He was dismissed and charged with and convicted of theft by deception.

Westpac Banking Corporation

As a result of my investigations three bank managers from the CBA bank had disciplinary action taken against them. A Melbourne bank manager was dismissed because of his illegal dealings with a corporate criminal who has also been charged with various offences including kidnapping and assault. A loss of some hundreds of thousands of dollars was caused to the bank by his illegal actions. The Manager has been charged by the Victorian Police with twelve charges of false accounting. Two New South Wales bank managers faced disciplinary action as a result of my investigations. One was dismissed and the other demoted.

BARRISTERS BOARD OF WESTERN AUSTRALIA

Abraham Bercove

8.037 Following referral Bercove was investigated and convicted of two counts of unprofessional conduct. The Supreme Court subsequently ordered he be struck off the roll of practitioners. His appeal was dismissed. He has sought leave to appeal to the High Court.

LAW INSTITUTE OF VICTORIA

Galbally & O'Bryan

8.038 Evidence was given by Mr Frank Galbally, a principal in this firm, that monies held under the name of "subsidiary account" appeared to consist of monies held on behalf of clients but not placed in his trust account. This procedure did not appear to comply with the requirements of the Legal Profession Practice Act and the Rules made under it. The matter was investigated by the Law Institute of Victoria. It found that any breaches of that Act had resulted directly from incorrect advice and supervision by the firm's auditor. The auditor was reported to the Australian Society of Accountants. As a result of the funds not being placed according to the Act the Solicitors Guarantee Fund suffered a loss of income. The firm was required to pay a sum of \$8,378 to the fund representing lost interest. In view of the circumstances in which the "subsidiary account" came into being no action was taken against Mr Galbally or the firm of Galbally and O'Bryan.

Public Service Board (Commonwealth)

8.039 As a result of matters reported in Interim Report No. 4, involving mainly illegal tax schemes, three members of the Attorney-General's Department Perth, were charged under the Police Service Act. One member, Mr Bercove, was subsequently dismissed and two others were disciplined.

PROSECUTIONS ARISING FROM CONDUCT DURING COURSE OF THE
COMMISSION'S HEARINGS

8.040 By reason of conduct occurring during the course of the Commission hearings, I referred a number of matters for prosecution. The following were convicted:-

(i) John Andrews

Convicted in September 1983, by the District Court (New South Wales) on three charges of giving false testimony. He was placed on bond in the sum of \$1,000 to be on good behaviour for three years on two charges and on the third charge was sentenced to two months imprisonment.

(ii) The Giannarelli Brothers

As a result of evidence these four brothers gave before me in October 1981, relating to their banking arrangements, they were subsequently sent for trial on charges of perjury.

In March 1983, Emilio, Giovanni and Mario Giannarelli were convicted. Giovanni and Mario Giannarelli were both sentenced to two years imprisonment. Emilio was placed on a good behaviour bond for five years in the sum of \$2,000. An appeal to the Full Supreme Court of Victoria was dismissed in April 1983 as to both conviction and sentence. In June 1983 Giuseppe Giannarelli was convicted of perjury and sentenced to fifteen months imprisonment.

Mario and Giovanni Giannarelli successfully appealed to the High Court. Subsequently Emilio and Giuseppe Giannarelli appealed to the Full Court of the Supreme Court of Victoria; their convictions were quashed and their sentences set aside on the ground of inconsistency of the common law of perjury with the provisions relating to perjury in the Royal Commissions Act. As they had all served imprisonment, it was resolved not to prosecute for the Commonwealth offence.

These men had all deliberately lied on oath but escaped conviction on technical grounds. I recommend that the Royal Commissions Act be amended so as not to exclude the application of State laws relating to perjury where a joint Commission is being conducted.

Moreover I recommend that the provisions of the Royal Commissions Act be amended so as to delete the requirement that the false answer be shown to be "material" to the Inquiry. A great deal of time and money can be spent, particularly in a complicated investigation, in establishing this matter when in truth the only question is whether a witness has chosen to lie on oath. I note that in most jurisdictions "materiality" was removed as a requirement many years ago, and for good reason.

Roy Holman

8.041 Holman was convicted and fined in March 1982 in the Supreme Court of Victoria on two charges of refusing to answer questions before the Commission in breach of the Victorian Evidence Act.

Dennis Lowe

8.042 Lowe was convicted and fined in March 1982, in the Supreme Court of Victoria on two charges of refusing to answer questions before the Commission contrary to the provisions of the Victorian Evidence Act.

Executive Members of the Victorian Branch of the Ships Painters and Dockers Union

8.043 On 2nd August 1984, Phillip John Scott, Douglas Maxwell Sproule, Robert John Dix, Guido Spiller, Roy Leslie Holman and Paul John Burns, Executives of the Victorian Branch of the Union and Francis Kinsella, a former

References

member, were convicted and fined for refusing to answer questions as directed by the Commission. Scott and McDonald were convicted of contempt and fined on charges.

8.044 There are five witnesses who have yet to be dealt with on charges of perjury and giving false testimony and two others who have been charged with refusing to answer questions. Two accountants are under investigation with respect to charges of giving false testimony.

Introduction

This chapter deals with the transition of the work of my Commission to the National Crime Authority. In recent weeks there has been presented to the Parliament copies of the correspondence between myself and Government relating to this matter. In the course of this chapter I refer to that correspondence. I need to do so in order to put into context recommendations which appear towards the end of it.

Despite the frank and robust differences of view expressed in this correspondence I have never had any doubt that Government was anxious to maintain the attack on organised crime. The Commission has had great support from both Prime Ministers for which I wish to record my appreciation.

History

9.001 On 27 July 1982 I delivered my Fourth Interim Report. In it I described the operations of criminal organisations in Australia. I gave an account of the extent to which many investigations had progressed. I isolated and defined the objective which the good Government of Australia required to be attained, namely the suppression of criminal organisations. I described what was required to achieve this objective, stating the systems needed, the qualifications of the persons who should be employed, and the manner in which the job should be done.

9.002 Shortly prior to the delivery of the Fourth Interim Report I had written to the then Prime Minister, the Right Honourable Malcolm Fraser. I had previously held informal discussions with the Minister for Administrative Services, the Honourable Kevin Newman, which had resulted in a letter of 6 May 1982. I had drawn attention to the magnitude of the problem and the impossibility of my Commission completing its task within the time then allowed. I had said:

"I am aware that the Government is considering the formation of a "Crime Commission". Indeed as I indicated to you it was my intention as part of a final report to discuss the alternative methods available to Government to deal on a permanent basis with the kinds of problems uncovered by this Commission. Such a report may well be pre-empted by Government decision but I would not expect such a decision to be made quickly: a very considerable investigation of various alternatives will no doubt have to be made before the form of any such permanent structure is determined.

In the meantime this Commission has a job, and I believe a very important job to do. It will not be done quickly, but will be done thoroughly. It will not be completed when I return my letters patent, for crime is an on-going activity and the directions of my investigation will have to be pursued by someone or some body when I have finished. But when I am to finish depends on the view Government takes as to its future role in and attitude towards the attack on organised crime.

My feeling at the moment is that this Commission requires a significant extension of time..."

(Letter from the Commissioner to The Hon. Kevin Newman 6 May 1982)

9.003 In my letter of 29 June 1982 to the Prime Minister I referred him to this letter of 6 May and requested an extension in the order of 2 to 3 years. No immediate response was received.

9.004 The delivery of my Fourth Interim Report following this request gave greater impetus for the creation of a Crime Commission. Most of the recommendations in the Fourth Report were accepted and implemented. The implicit recommendation that a Crime Commission was required was also accepted. However, in all the discussions at that time and thereafter, even following the change of Government, the response to requests of the most fundamental character, such as the grant of an extension, was always long in coming. Indeed I had received no official response to my letter of 29 June 1982 by October of that year, and the eventual extension was not granted until a few days before my Commission expired. This made the task of budgeting for the future very difficult and created great uncertainty amongst the staff, many of whom were not members of the Public Service and had no security of tenure.

9.005 By October 1982 the Government's intention to establish a Crime Commission became known. I was required to budget for the forthcoming year. I had been informed it was intended the new Commission would take over the basic structure, premises and equipment of my Commission. If that was to be the case then, in budgeting, it was sensible to provide for the expansion of the staff, equipment and techniques in anticipation of the new Commission adopting them. On 4 October 1982 I wrote to the Prime Minister informing him of my intention and pointing out that if this was not acceptable my proposed budget should be rejected and I should commence winding down my staff and operations.

 "...The Commission now needs some guidance as to its future planning and this is an urgent need.

Its future planning is clearly affected by the nature and timing of any decision about a future National Crime Commission or other permanent structure. As I understand current Government thinking, it is proposed that when a new body is set up it will take over the basic structure, premises and equipment of my Commission. If this understanding is in general terms correct then it would be a comparatively easy matter for me, after a suitable period of overlap, to hand over my investigations to that new body.

My immediate problem is that the extent of my present investigations requires expansion of staff, equipment and new premises. My present premises are overflowing with documents and people; as desks are vacated for a short period they are immediately occupied. This is highly inefficient. Massive new loads of documents are expected shortly; they are extremely important and require detailed analysis.

The staff of the Commission have prepared a fresh budget for the financial year ending 30 June 1983. It is proposed to be handed to the Department of Administrative Services this week. It is based on the assumption that the new National Crime Commission will be taking over at the appropriate time. That is the only reasonable assumption on which it could be drawn.

If I did not make that assumption the budget would need to be prepared on the basis of a winding down of the Commission about March next year with a view to final report by the end of June. Such a basis would prevent me from budgeting for the facilities and staff which I need properly to continue my work. Moreover there would not be the ability to maintain my investigations in areas which my successor would expect to see investigated when he took over my job.

I therefore ask for approval in principle to the basis on which I have prepared the budget. If that basis cannot be approved at this stage it will be necessary for me to commence the winding down and disbandment of the current organisation with the result that any new structure would be gravely impeded in its commencement.

This letter is written on the basis that the Commission's term has been extended to 30 June. (I note that the Victorian Government has extended my term to 31 December.) Whether this is a realistic date having regard to the extent of my investigations depends on the speed with which a new viable structure is available to take over my work. I do not underestimate the difficulties this will pose."

(Letter Commissioner to the Prime Minister 4 October, 1982)

9.006 Within 24 hours of despatch of that letter the Acting Attorney-General, The Honourable Neil Brown, said I should proceed to budget on that understanding. I did so and a budget was prepared which envisaged an expanded Commission, occupying larger premises, designed for the permanent home of the Crime Commission. The budget was submitted for approval and accepted.

9.007 On 25 October 1982, after the budget had been approved, the Prime Minister replied to my letter noting my intentions and acknowledging that a transition from my Commission to the new Commission was envisaged. It also noted that the new Commission may be located in Canberra, which possibility precluded development of the premises in Melbourne. Otherwise my Commission was to continue with the development of techniques on the basis that its expertise would pass to the new Commission.

"As the Acting Attorney-General has discussed with you the Commonwealth for its part has agreed to extend your Commission to 1 July 1983 on the assumption that the National Crimes Commission will be available to commence operations early in 1983. The Government recognises the need to allow for an orderly transition between your Commission and the new body. It would, if necessary, consider extending your Commission beyond 1 July 1983 to ensure that this occurs.

You have indicated an urgent need for some guidance for the Commission's future planning. While the Commonwealth does not seek to direct the Commission as to how it should carry out its functions, it sees certain areas of priority for action by the Commission in the remainder of its term...

I am asking the Acting Attorney-General to speak further with you and with Mr. Cain, in relation to the future activities of the Royal Commission and the transition to the National Crime Commission.

I note that you have prepared a fresh budget for the remainder of this year envisaging the expansion of staff and equipment and new premises. The Minister for Administrative Services will be considering these estimates and the best way of meeting your needs during this period. This needs to be in the context that the National Crime Commission may be located in Canberra rather than in Melbourne."

(Letter Prime Minister to the
Commissioner 25 October 1982)

9.008 The suggestion that the new Commission would be seated in Canberra made nonsense of the budget, by now approved, in which premises were to be developed in Melbourne. It also made difficult to justify the employment and training of staff recruited in Melbourne. It was not a sensible location, for in Canberra it would be far removed

from the geographical location of the operations of criminal organisations. It left me in a quandary as to what I should do, since I had no wish to expend the public purse on a false basis. On 4 November 1982 I again wrote to the Prime Minister pointing out the difficulty created by the possibility that the location may be in Canberra and seeking advice as to what should be done. I received an acknowledgement of the letter, but no clarification.

"I think I should say at the outset that I find the contents of (the Prime Minister's letter of 25 October) very disturbing.

When I wrote to you on 4 October I indicated the urgent need for some guidance as to the Commission's future planning and advised you that unless otherwise advised I propose to prepare a budget for the rest of the life of the Commission on the basis that the expanded staff numbers, new premises and additional equipment, could form the basis of a proposed National Crime Commission.

Within 24 hours I was advised by the Acting Attorney-General that I should proceed on the basis set out in that letter. As a result a budget has been prepared and delivered. Inspection of new premises has been undertaken and recommendations made and a new staff proposal has been prepared.

I am now advised that the location of the National Crime Commission may be Canberra.

Such a proposition completely destroys the basis on which I wrote my letter of 4 October and on which I have taken the steps outlined earlier in this letter. Let me explain this statement.

1. It has been contemplated in all my discussions with the Government and particularly with the Attorney-General, Senator Durack, that when a Crimes Commission was

established my Commission would need a further six months. This would be made up of three months handover period and three months for preparation of a final report. Such a handover assumed that the great bulk of the staff presently working with the Royal Commission would change over to the Crimes Commission. They would maintain for the benefit of the Crimes Commission their expertise and their very extensive range of personal contacts with law enforcement agencies developed slowly over the last two years. The new members of the Crimes Commission would then be able to take over a continuing and experienced staff and operation already occupying suitable premises.

2. However if the Crime Commission is to be based in Canberra, the scenario changes. It is extremely unlikely that any of the existing staff would move to Canberra or leave Melbourne. A completely new operation would have to be set up and new premises acquired.
3. In those circumstances talk of a relatively simple handover in three months is no longer appropriate. Indeed I have grave doubts whether my position as Royal Commissioner for both the Commonwealth and the Victorian Governments would fit easily into the far more massive operation which would then be required.
4. Moreover since I wrote to you on 4 October your Government has announced its decision to proceed with the establishment of a National Crime Commission independently of the States, though hopefully with their support and cooperation. Let me make it clear that I make no comment on that decision. It is the decision for Government to make, but it may in due course be a matter on which I would need to take advice from your Government and the Victorian Government whether I

could, acting under letters patent from both Governments, actively assist the operation of such a Commission unless both Governments consent. I think it is appropriate for me to say having regard to experience I have gained and the insight I have acquired in the last two years that I would regard it as a disaster for the Crime Commission to be located in Canberra. Such a decision would make it difficult to persuade the appropriate people to staff and lead it, but far more important is the undoubted fact that organised crime is not based in Canberra. It operates in Melbourne and Sydney and the other large seaboard cities of the country and investigation into and an attack on it must be located in a place where instant response can be organised and access to information, both documentary and personal, is easy.

In the result I am left in the same dilemma that I raised in my letter of 4 October. If I am to act on the basis that I am to conclude my work by 30 June 1983 and a Crime Commission is not going to be located in Melbourne it would be impossible for me to justify the considerable expense of new staff, new equipment and new premises. Current predictions are that such new premises would not be available before March 1983. It would be unconscionable to contemplate such expenditure for an occupation of approximately 3 months. In any event the Commission would not be expanding on that assumption but contracting.

I must therefore ask you as a matter of urgency to advise me on the assumption on which I am to plan the remaining life of the Commission..."

(Letter Commissioner to the Prime Minister 4th November, 1982)

9.009 The Government had announced the intention to establish a Crime Commission. A Bill was introduced into the Federal Parliament on 21 October 1982. In the second reading speech the Acting Attorney-General drew attention to the part of my Fourth Interim Report in which I described the requirements for a successful Crime Commission.

"Several recent Royal Commissions have demonstrated that they are able to uncover and bring to public notice instances of wrong-doing not detected by ordinary law enforcement agencies. These include the Costigan Royal Commission into the Activities of the Federated Ship Painters and Dockers Union, which attributes its success in this regard to first, its power as a Royal Commission to require by subpoena the production of documents and the attendance of persons for examination - this power is not of course possessed by the police; secondly, its access to equipment and expertise to enable sophisticated intelligence gathering and analysis; and, thirdly, the use of personnel with high intellectual capacity and special training.

(Acting Attorney-General
Hansard 21 October 1982)

9.010 In the context of the correspondence then passing between me and the Government it was clear that the adoption of my staff, premises and techniques were seen as desirable and, subject to resolution of the debate as to the site of the new Commission, it was to be done.

9.011 The Bill steadily moved through Parliament. During its course an amendment was made by which the privilege against self-incrimination was to be allowed to witnesses and was to extend to their personal documents. This raised difficulties as to my disposal of evidence, more particularly documents, which I had seized in circumstances in which the privilege did not apply. Now believing that all were agreed that the new Commission should have access to everything I held, on 25 November 1982 I wrote to the

Acting Prime Minister, drawing his attention to the difficulty I would encounter in handing those documents to the new Commission in the absence of any statutory authority or requirement to do so. It would allow the new Commission to gain from me what it was precluded from obtaining itself. There seemed some difficulty with certain advisers in the Government in grappling with this problem and that difficulty continued to mark the dealings between me and those advisers, even following the change of Government in 1983. In my letter of 25 November 1982 I said:

"In my letter of 4 November I raised a number of matters which related to the ease of handover of my work to a National Crime Commission. One further problem has arisen which I have discussed with Mr. Brown and Mr. Newman. That problem arises from the so-called Spender amendment to the National Crime Commission Bill which enables a witness to claim self-incrimination in relation to documents. You will understand having regard to the way in which my Commission had been conducted that I would regard such a restriction on the National Crime Commission's powers as very limiting indeed. Once again, of course, this is a matter for Government policy. It does however have a concern in relation to the easy handover of my work. If that amendment had not been passed I would not have seen very much difficulty in handing over to the National Crime Commission the documentation which I currently hold. However if a National Crime Commission is precluded from acquiring documents which may tend to incriminate a witness, then I do not know how I could properly hand over to such a Commission documents in respect of which such a claim for privilege might be taken. It would be quite wrong for me to give to a National Crime Commission through a back door documents which it could not acquire itself because of the amendment. This is a very serious problem which would require a good deal of thought if the amendment remains in the Bill."

(Letter Commissioner to Acting Prime Minister 25 November, 1982)

9.012 The Bill was passed but before proclamation there was a change of Government. I immediately wrote to the new Prime Minister, the Honourable R.J. Hawke, A.C., M.P., seeking advice as to the future of the Crime Commission. I drew attention to the emasculation of the powers of the Crime Commission. I pointed out that if the new Government proceeded with the existing Act, and if it wished there to be a transfer from my Commission to it, a three month period of co-existence between the new body and mine was necessary for investigations to continue without interruption and for the transfer to be effective. My letter was dated 15 March 1983. In it I said:

"What is required for the efficient and necessary continuation of the investigations of this Commission is that there should be a body in existence (at least three months prior to my demise) vested with the appropriate powers enabled to maintain, without interruption, my work.

If the Government proposes to review in depth the National Crimes Commission Act (and I do not for a moment suggest it should not adopt this course) such review will obviously take a good deal of time, perhaps beyond the end of this year. If such reconsideration does not eliminate the Spender amendment and eliminate legal professional privilege, then a new Crimes Commission will not be able to take over my work efficiently.

If it is the Government's desire that my current investigations are to continue, a serious question arises as to how this is to be achieved. One answer would be to request me to continue my work beyond the end of this year. Whether such a request should be made depends on the answers to the matters raised in the preceding paragraphs."

(Letter Commissioner to Prime Minister
15 March 1983)

9.013 At this time the Report of the Royal Commission of Inquiry into Drug Trafficking was submitted. It drew attention to the need for a Crime Commission and it identified a number of deficiencies in the unproclaimed Act in addition to those which I had identified. I pressed the Government to give the matter further consideration. I was met with the answer that the immediate proclamation of the Act was envisaged and an invitation to accept the position of Chairman, or at least as one of the Commissioners, if not Chairman. This was put during meetings I had with the new Attorney-General, Senator Evans. In a letter of 25 March, 1983 from me to the Prime Minister I reported upon those discussions and my answer:

"In my recent letter to you dated 15 March I indicated various questions which needed to be considered in terms of my Commission and which could be a useful basis of discussion.

I had such a discussion with the Attorney-General last Monday. I have since had two telephone discussions with Mr. Andrew Menzies, Deputy Secretary of the Attorney-General's Department, the most recent of which was yesterday afternoon.

I am extremely disturbed by the implications of those discussions.

At the meeting with the Attorney-General it became clear that rather than contemplating an indepth consideration of the Crimes Commission Act, it was intended with considerable expedition to proceed with the proclamation of the existing Act. I was asked whether I would be prepared to take on the job of Commissioner. I said I was not. I will return to the reasons for my attitude a little later.

Yesterday I was informed by Mr. Menzies that the new suggestion was that the Commission be set up with Sir Edward Williams as Chairman, myself as number two member, and Professor Ronald Sackville as the third member. I explained to Mr. Menzies that I had already informed Sir Edward Williams that I was not prepared to accept a position as a member of the Commission which was in my view not able to do the job effectively.

Yesterday I sent to you a draft copy of lectures prepared by Mr. Douglas Meagher Q.C. on the problems of organised crime and the appropriate methods to deal with it. These illuminating papers outline the many and varied matters which need thorough and lengthy consideration before a final decision as to a permanent structure is made. Although prepared without access to the Report of Mr. Justice Stewart and without knowledge of its contents that Report is in substantial agreement as to the deficiencies of the current proposals. The present Crime Commission Act is the product of hasty consideration. It would be a great tragedy for this country if the opportunity now presented to your Government to consider these matters in depth with an input from a wide range of interests in the community was not taken.

May I therefore urge you not to proclaim this Act in haste. In its present form it will not achieve the purpose for which it was intended.

On a personal note let me refer to the offer made to me to head the Commission. I explained to the Attorney that I was not prepared to accept this position. The fact is that my present job has been extraordinarily demanding and has had considerable effects on my personal life. My first preference is to return to practice at the Bar from which I have already been absent for 2 1/2 years. To be absent for a further 2-4 years would make more difficult that return. The Attorney then suggested I would be

assured of a Federal Judicial appointment. This is an outrageous suggestion. Quite apart from the fact that I do not presently have judicial ambitions having rejected offers in the past, it is quite wrong to regard appointments to the Bench as a convenient method of solving other problems. One such unfortunate appointment has already been made. But more significantly any person holding the position of Chairman of a Crimes Commission must do so completely independent of any hope or promise which may be based on his performance in his job. It was put to me on the basis that I would have to accept a much lower salary. Even if I was offered the position of Crime Commissioner of a properly set up Commission on a barrister's fee level I would have to consider seriously whether I would wish to accept the position. The level of salary is not a major factor. I would not be prepared to lend my name to the present Commission because I am convinced it cannot do the job it is supposed to do."

(Letter Commissioner to Prime Minister
25 March 1983)

9.014 At this time my senior assisting counsel had been invited to deliver papers at the ANZAAS Conference in Perth. I urged him to take the opportunity to do so believing that the new Government as much as the old desired public debate on the proper response to the problem of organised crime. The papers were delivered to the Prime Minister before they were published and every indication was given that publication of such matters was desired. Officers of the Department of the Special Minister of State attended their delivery and there was much public debate stimulated by them. Amongst other things those papers debated the proper role for a Crime Commission, and the powers that were required for it to do its job effectively. A copy of those papers is to be found in Appendix 1-G. This led to acceptance that there should be more intensive consideration given to the nature of the Crime Commission.

There had been no opportunity for those groups concerned with civil liberties to voice their opinion; nor for others in the community to have their say. Though my views differed markedly from many of these groups, I was firmly of the opinion that debate was required. To that point the debate had been marked by a most inadequate understanding of the issues involved. The response was a National Crime Seminar held in the Senate Chamber at the end of July 1983. I attended, together with my senior assisting counsel, and participated in the debate. Opportunity was given and taken for all manner of views to be expressed. Both I and my senior assisting counsel made it clear that neither of us was available for appointment to the new Authority no matter what shape it may take.

9.015 At this time I delivered my Fifth Interim Report. I took the opportunity to express further views on matters relating to the proposed National Crime Commission. Those views were published just prior to the Crime Seminar taking place and provided a further contribution to the debate.

9.016 In the meantime the work of my Commission was continuing. On 25 April 1983 the Prime Minister, the Special Minister of State and the Attorney-General attended at my Commission's premises where they were given a short briefing of some two hours' duration by my senior assisting counsel on the operations of the Commission. This briefing was directed at the operations, as distinct from the operational techniques, which required much longer to impart. At the close of that briefing there was further discussion between the Prime Minister and me as to the location of the new Crime Commission, the Prime Minister agreeing it should not be located in Canberra. The Prime Minister made clear the Government's resolve for there to be a Crime Commission, and again publicly affirmed that intention at the Seminar in the Senate Chamber in July. He

requested that the work of my Commission should focus upon drug trafficking, and should proceed until the new Crime Commission was established.

9.017 With these clear declarations by the Government, planning and operations within my Commission were conducted on the basis that they would be taken over by the new Authority. Thus money was expended on the development of computer systems, and operations were undertaken, which otherwise would not have been. For example, money was expended on the development of computer applications with an eye to the future. Major operations were undertaken which on any rational assessment were unlikely to be completed during the life of my Commission; but in respect of which it was confidently felt the new Authority would see through to completion. Further it was anticipated that no matter how large an office might be established in Melbourne, another office would be required in Sydney. The most likely candidate for that office was that of the Stewart Commission. Accordingly it was invited to come on to the same data base as that of the Commission and to adopt its systems. The junior staff of that Commission attended at my premises and were trained in the computer systems. By that time the Stewart Commission was enquiring into Nugan Hand, and the use of the data base was valuable because some of the Nugan Hand material I had collected on one of my visits to the Colony of Hong Kong had been placed upon it.

9.018 By August 1983 the Government announced it intended to enact new legislation creating a new body to be known as the National Crime Authority which was to commence operations on 1 January 1984. My Commission was due to expire on 31 December 1983. This did not provide for the necessary overlap if my systems and operations were to be transferred to it effectively. On 10 August 1983 I wrote to the Prime Minister drawing attention to the discrepancy in

dates and seeking guidance. I pointed out that if there were no handover I would need time to write a report which would take some 3 months. Thus my investigations would cease at the end of September. There would be a hiatus; momentum would be lost and no effective transition would occur. In the letter I said:

"As the life of this Commission will terminate on 31 December this year it is necessary that I should raise with you certain matters on which I need advice from Government so that future planning for the Commission can be done.

The announced policy of Government is that a National Crimes Commission is to be established to commence operation on 1 January 1984. It is stated that this body will take over my current investigations, staff and premises. Although a good deal of work, planning and training will be needed, this handover can be achieved if the new body has adequate powers to continue my investigations including access to Income Tax records.

However I cannot overlook the possibility that as a result of discussions at the recent National Crime Seminar there may be a different kind of body set up in collaboration with State Governments.

It is of course for Government to decide the power and structure of any permanent body set up to deal with the problems of organised crime. My concern is to see that the handing over of my investigations is done in a way which reflects the nature of this new organisation.

For this reason the course I follow in the last three months of the Commission will be determined absolutely by the decision to be taken by Government. Let me explain by way of illustration.

Scenario 1

The Government decides to set up a National Crimes Commission based in Melbourne with appropriate powers including access to tax records. In this case the new body would take over current investigations, staff and premises. A period of training for new persons coming in would be needed. This would require a minimum of two months, preferably three. During the last 6-8 weeks I would be primarily concerned with the preparation of my final report. The handover though difficult could be done efficiently.

Scenario 2

The Government decides to set up a National Intelligence Agency along the lines of the Victorian proposal. Such an agency would not have the powers to continue my work. My task would then be to finalise my Commission in the traditional manner, return documents, cease the calling of evidence and prepare a final report. A very real question of principle would arise as to what should be done about documents acquired by me pursuant to Royal Commission powers which could not be acquired by the new body without these powers; also what would be done about the database I have developed. Since the drive behind the Victorian proposal reflects a reluctance to interfere with traditional liberties I would have to take into account these matters in deciding my attitude.

The last three months of my Commission would be devoted to these tasks. What would happen to my staff depends on the nature and location of the new body. If it is not to be in Melbourne then any useful relationship between it and my Commission will be enormously difficult.

I mention these matters so that it can be appreciated that my ability to plan the last three months of my Commission is entirely dependent upon Government decision as to the form of the new body.

Unless that decision is made at the latest by the end of September I face an almost impossible task of closing down this operation in any efficient and sensible fashion.

...

All of the investigations currently being pursued by my staff have drug implications. It is not possible for those investigations to be completed by 31 December 1983...

Accordingly at the end of December I will have many very large uncompleted investigations. The question arises as to what I should do with them. If there is to be no body with the coercive power to compel the production of banking and legal records, no access to taxation records and no ability to examine witnesses, then there is no point in handing the matters to someone else. They will not be able to pursue the investigations. They will be powerless to do so.

If there is a body with the necessary powers then I may hand the matters over to the great benefit of the community.

Thus the nature of my final report depends upon the existence or otherwise of a suitably empowered Authority to continue the investigations. If it exists my report will be comparatively short recording the transfer. If it does not exist my report will still be short, for there will be little point in doing more than indicating, as I have several times, the nature and extent of organised crime."

(Letter Commissioner to Prime Minister
10 August, 1983)

9.019 I wrote again to the Prime Minister on 17 October 1983 about other matters. I received a response from the Prime Minister on 26 October 1983. So far as it related to the matter which is the subject of this Chapter he said:

"Following the Crime Commission conference in July the Commonwealth and the States have been discussing the form of a possible National Crime Authority. A proposal developed in these discussions is now under consideration by Governments.

My Government's intention, subject to Caucus approval on 1 November is to introduce as soon as possible in November legislation for a National Crime Authority with the aim of final passage in the present Budget Sittings. The Authority will have as its primary function the conduct of investigations into suspected criminal activities pursuant to references given by Governments with the intention amongst other objectives of assembling evidence for the purpose of prosecutions and will have appropriate coercive powers as necessary to pursue such references.

The Government recognises that while it would prefer the new Authority to be established and in a position to take over from your Commission on 1 January 1984, time will probably not permit the formal establishment of the Authority until 1 March and its full operational effectiveness until some little time after that. Bearing in mind the need for an "overlap" transitional period during which your Commission can impart its expertise and transfer its staff and material to the new body, the Government accordingly has in mind, subject to your agreement and to further review if circumstances make this appropriate, extending your Commission to 30 April 1984.

The Government is proceeding in this respect on the assumption that the Commission will have completed its essential work on that part of its reference which directly concerns the Ship Painters and Dockers Union by the end of this year and that it will have furnished its final report to Governments not later than the end of February 1984.

We would envisage the transition process as commencing informally from the beginning of January and formally from the establishment of the new Authority on 1 March. During the whole of the period between 1 January and 30 April the Government would want your Commission to concentrate its primary attention on the process of communicating its expertise, transferring personnel and material to the new Authority, making arrangements for on-going enquiries, and generally assisting the Authority to take over its role.

While this is a broad outline of the Government's wishes there will obviously be a need for discussion on details and I have asked the Attorney-General and the Special Minister of State to arrange a meeting with you to discuss in more detail the proposed arrangements once the legislation has been introduced into the Parliament. In particular there will need to be discussions on the passing on of the criminal intelligence which the Commission has assembled, conservation of the techniques and the expertise developed and the arrangements for handling outstanding enquiries."

(Letter Prime Minister to Commissioner
26 October 1983)

9.020 The course proposed by this letter departed radically from that suggested earlier, and raised difficulties. I believed it impossible to submit a final report, together with the return of my letters patent, and then continue as if I were still in office. The period allowed for the transition was far shorter than that which I had previously advised was necessary. I did not regard my earlier advice as being in error, and subsequent events have not shown it to be so. Accordingly I responded to the Prime Minister's letter on 2 November 1983:

"I would be less than frank if I did not indicate to you my view that (your letter) does not seem to meet the problems outlined in my letter of 10 August which came at the end of a series of letters commencing on 29 June 1982.

In my letter of 10 August I indicated I needed a minimum of two months, preferably three, to train a new Commission and hand over the documents and the database. After that was done I needed a minimum of 6-8 weeks to make a final report. That is a total of five months. Those estimates were based on the assumption that the new Commission would have like powers and at least as wide a range of enquiries as my own Commission.

At the moment apart from perusal of reports in the media I am ignorant of the precise range of powers and functions of the new Commission. However, if what I read is correct it seems clear that its powers will be significantly more limited than mine; and the ambit of its investigations would depend upon those which are referred by Government. Indeed it may have no areas to investigate until such reference is made.

The result is that I cannot simply hand over the database I have assembled to a new body. For example the taxation records I have collected have not been collected pursuant to a Court order, and unless and until the new Commission obtains a Court order and there is an amendment to Section 16 of the Income Tax Amendment Act I am required by law to return the records to the Australian Taxation Office. The taxation records held by me are very considerable. To extract them, remove the data collated from them from the computer system and physically return the material will take some time.

The removal of the taxation records is the least of the problems. If the new Commission cannot compel evidence when such evidence incriminates, if it is restricted by being denied access to documents that incriminate and if it is

limited in the matters it may investigate, then I should not hand over material gathered which would lie outside its authority. A great deal of the material I hold is in this category. It will be necessary to consider each item and make a rational a decision as I can; this will probably entail allowing submissions to be made by the parties who have supplied such material. My earlier estimates of the time required for handover made no allowance for these procedures. I estimate that this process may take some two months after the new Commission has had some matters referred to it (so that material relevant to its investigations may be determined).

My current investigations cover all States and range over many areas of criminal activity. Ideally I should be able to act on the basis that all these matters will be taken over by the new Commission. Perhaps there will be objections from some States as to the referral of some of these matters. They will need to know the full extent of my investigations before they can decide this matter. These questions are unlikely to be decided quickly; but I will have to make my decisions on the basis of what has been referred at the beginning of the handover period. The schedule you outline in your letter suggests the whole of the period 1 January to 30 April 1984 be concerned with handover and training. If I assume that on 1 January there is a referral of matters to be investigated by the new body, this will still be quite insufficient time to attend to the matters I have described above, let alone address the very considerable task of training the new officers. January is a holiday period. It may be that the newly appointed officers will take up their positions and attend from that day on but I would think it unlikely. It is certainly not something I would ask of my staff who have worked hard and long during this year. At best matters would get under way in the third week of January. At the other end of your period

falls Easter. The apparent four month period thus shrinks to three. It is not adequate to attend to the matters you suggest.

So far as the final report is concerned it is not possible to attend to matters of the complexity I have described above, and at the same time to write a final report. Previously I had assumed that the new body would take possession of all of my material. I had also assumed it would follow through my many uncompleted investigations. It seems that it will do neither of these things.

In those circumstances I must write a very different final report to that which I contemplated in my earlier discussions with you. It must be written prior to the return of the documentary material for it is on that material that it will be based. It will be, in these circumstances, a massive task for I must now write a report on incomplete investigations, whereas previously I expected to say no more than that those investigations were in train and would be completed by the new Commission. Writing a report of a completed investigation is difficult enough (witness Hamidan). To write it of incomplete investigations is very much more difficult. That task cannot be done whilst also being engaged in training a new Commission and determining the fate of the mass of documentary material I have collected.

Moreover there is the problem of the present investigations. When I saw you in April this year you indicated your wish, with which I concurred, that the Commission should concentrate on Painter and Docker activity with particular reference to drugs. That is the course I have followed. It was necessary for me to complete some current matters. That has taken some time. In the case of Hamidan it required a very large report. In other cases it has required the briefing of other agencies to take on the partly completed investigations in order to finish them.

...

The drug investigations are now progressing very well. However as you will understand the techniques used by the Commission which have to date been very effective involve a wide-ranging enquiry circumscribing the main target area so as to understand it completely. As the investigations proceed increasing obstructions are being and will be encountered. This is to be expected. What cannot be expected is that they will be quickly overcome. Even with the powers of a Royal Commission it is still very time consuming.

The new Commission cannot usefully be given these investigations for it is to be denied the powers needed to do them. I cannot complete them within the time you allow. On the other hand at this moment they are at a critical point and it would be contrary to the public interest to stop. That is likely to remain the case for the next few months. It is only those who have experienced investigations such as these who fully appreciate the time they take and the necessity for persistence. Those who are the targets have much to lose and a great deal of money to employ in their defence. I find it difficult to believe that you would wish this fight to be abandoned at this point; but if that is the decision of the Government, so be it.

For these reasons I expressed the opinion that the time-table you give in your letter is not only unworkable but contrary to the public interest. If I act on the reporting date you suggest then I should immediately stop all investigations and start writing. In that manner I may get the report in by the end of February, though it will necessarily be far from complete and therefore not satisfactory. It is not likely such a report will serve many useful purposes in the Government of our country. In that period I could not allow any time for training the new Commission or determining what should be handed over.

At the time of submitting my final report I must return my letters patent. At that stage I become functus officio. If that happens at the end of February then I will not have given any attention to the return of the documents. Certainly I will not then be in a position (by reason of the absence of power) to make the appropriate directions. There will be no time for training the new staff.

The situation is not of my making. I have repeatedly requested over the past 18 months some finality on the future of the Commission and have asked for it in adequate time to allow me to do my job properly. Neither Government has ever attended to that task with sufficient appreciation of the lead time required and this is no exception.

I do not think a sensible decision can be made as to the date of termination of this Commission until the new legislation is passed. Having regard to the expressed intention to have it passed by the end of the budget session, I think I should for the time being request a further extension until June 30 next year on the basis that final consideration can be given to the matter when the legislation is passed and the new body is set up. In many ways I make this request with a heavy heart. I have now been doing this job for over three years. I am anxious to return to private life and to practise at the Bar but I cannot in conscious cease the work I am doing except on a proper basis."

(Letter Commissioner to Prime Minister
2 November, 1983)

9.021 On 8 November 1983 the Prime Minister responded to my letter indicating its contents were being given serious consideration:

"In the light of your comments the Government is considering further the question of the timing of the termination of your Commission.

In the meantime it is apparent that there is a number of legislative and administrative issues concerning handover arrangements to the proposed National Crime Authority and the disposition of material gathered by your Commission which need to be addressed without delay.

I suggest that consideration of these matters would be facilitated if officers of my Department, the Attorney-General's Department and the Department of the Special Minister of State could have detailed discussion as soon as possible with you or your officers. Those discussions could if necessary be followed by discussions at Ministerial level.

(Letter Prime Minister to Commissioner
8 November, 1983)

9.022 The discussions took place with senior departmental officers in Melbourne shortly afterwards. Various ways and means of overcoming the problems I had raised in my letter about the transfer of records were discussed. I insisted that any arrangements be strictly in accordance with law, and that they did not flout any principle of law. I advised that the simplest and most efficient means would be by a direction by Parliament reflected in the National Crime Authority Bill that all of my database be transferred to the National Crime Authority. Such a statutory direction would remove from me any discretion in the matter and would make the transfer of the material immediately achievable.

9.023 By this time new legislation establishing the National Crime Authority had been presented to Parliament. It was again announced that it was intended it should take over my offices, staff, procedures and database. On 13 October 1983 I delivered the Sir John Barry Memorial Lecture in which I referred to the system required for a successful Crime Authority. In his second reading speech introducing

the National Crime Authority Bill to the Senate on 10 November 1983 the Attorney-General referred to this lecture emphasizing that the techniques I had spoken about were those required by the new Authority:

"The Government believes that the proposed Authority will meet the major objectives and concerns that have emerged during the public debate on the Crimes Commission issue over the last six months, viz:

The need to avoid the fragmentation of effort in the previous series of ad hoc Royal Commissions, and to ensure co-ordination and continuity in the fight against organised crime; the need to maintain intact the resources, and expertise of the Costigan Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, and to ensure the continuation of its work; the need to take account of the many fears and concerns expressed about a permanent criminal investigation body with unlimited terms of reference and uncontrolled investigative powers; and the need to secure the active involvement and co-operation of the States. The question that is most frequently asked in relation to the proposal is why is there a need for a new body and how will its operation differ from police investigations as they are now conducted.

Police investigations are concerned essentially with particular offences known or reasonably believed to have been committed, with the starting point usually being the complaint of a victim or discovery by the police of the results of a crime. By and large, the police forces of Australia do an excellent job and there is no question of the Crime Authority supplanting those organisations.

However, it is of the nature of organised and sophisticated crime that particular manifestations of that crime - particularly in the areas of drug importation, corporate fraud and tax evasion - may not come to the attention

of the police forces. Activities of this kind may be so intricately interwoven, may involve so many jurisdictions and may be so well camouflaged under apparently legitimate ways of doing business that they may well not cause any one police force to take notice.

The Costigan Royal Commission has shown that, by following a series of financial leads in a determined exploratory fashion, widespread and serious conspiracies can be uncovered. The techniques involved, and the need for them to be deployed by a National Authority specially designed for the purpose, have been clearly described by Mr Costigan in a passage of his Sir John Barry Memorial Lecture delivered on 13 October 1983."

(Senate, Hansard, 10 November 1983, 2492)

9.024 Thereafter the Attorney-General referred to a lengthy extract in which I described the requirements for an effective investigation of organised crime, and the manner in which it should be carried out. The second reading speech left no doubt as to the intentions of the Government. They received the enthusiastic support of all parties in Parliament, the consequential debate not being directed at this objective but rather as to whether it was being effectively achieved. Seven days later, again in the Senate, the Attorney-General acknowledged the time it would take to effect a proper transition. The Opposition had proposed that the Bill be referred to a Senate Committee to investigate its adequacy, and the Government opposed it. The Attorney-General argued against delay. He said:

"There are problems with further delay in this respect. There are two parts to the argument. The first part is that we are unlikely to do much better than the model we have presently reached. The second part of the argument is that there are difficulties with further delay in this matter. Let it be appreciated that it is not a matter of delay in this respect

merely for one or two months. There is and will be a very substantial transition period involved, once the legislation is in place, before the new Authority can be effectively on foot, and before the Costigan Royal Commission on the Activities of the Federated Ship Painters and Dockers Union can be asked properly to terminate its formal existence. At the moment we have assessed that transition period as taking necessarily something like 4-5 months from the enactment of this legislation, which we hope will occur some time later this month or early December. Accordingly, we have indicated to Mr Costigan the current timetable we would be working on; that is, the enactment of this legislation either later this month or early December, the formal creation of the new Authority on 1 March next year, and a transition period extending both before and after that formal creation for a couple of months either side, running to a proposed termination date of around 30 April. It may well be that that has to be further extended because of the enormous logistic difficulties associated with gearing up the new organisation and putting existing enquiries on the new footing that they have to be put on in order to satisfy the terms of this new legislation.

To delay any possible passage of legislation, as is proposed, until the end of May or early June - that is, the end of the autumn session next year - will result in a slippage in this timetable where the new Authority will not be able to be put on foot. We cannot ask people to gear up for something which has no legislative existence or authority behind it. The new Authority will not be able to be put on foot until well into the latter part of next year, and probably not until the end of next year, applying the sorts of rules of thumb I have just indicated. We are buying, by this particular exercise, not just a month or twos' delay but a very substantial delay in the effective establishment of the proposed new Authority. I do not believe that delay

can be justified given the enormous processes of consultation that have produced the particular model that is now before us and given also the difficulties and, let us acknowledge it, the dangers associated with continuing on a de facto Crime Commission basis through the Costigan Commission."

(Senate, Hansard, 17 November, 1983, 2733-2734)

It will be observed that the Attorney-General acknowledged the difficulties of transition and the requirement of a four or five months period.

9.025 On 17 November 1983 the Senate referred the Bill to a Senate Committee to investigate the powers granted by it and to report by 30 April 1984. This decision rendered abortive the discussions between myself and the Government as to my future programme. On 24 November 1983 I wrote to the Acting Prime Minister seeking a longer extension than I had previously sought. I referred to the discussions with the senior department officers and also to a meeting I had with the Victorian Premier and the Federal and Victorian Attorneys-General on 12 November 1983. I reported:

"On Saturday 12 November I met with the Victorian Premier and the Federal and Victorian Attorneys-General. At that meeting I expressed the view that the timetable suggested in an earlier letter dated 26 October was too tight to be workable. There were basically two reasons for this.

Firstly there were some matters which I could not easily hand over and which I would need to finish myself. I referred by way of example to the problem of extortion in the Port of Adelaide which, to my surprise, has now raised a very important question of whether there should be permanency of employment for painters and dockers. Before the Sweeney Commission the Union had argued

strenuously against this concept; it has now told me it would like the matter raised for serious debate. I expect this question, which was not alive when I last wrote to the Prime Minister, would add at least a month to my work.

Secondly one of the most important activities associated with the handover is the training of the new Commissioners and new staff both in the content of the investigations and in the techniques and systems developed over the last three years. This of course can be done only after appointments have been made by the Governments concerned. I think it is not realistic to believe that this can be done in the two months originally suggested.

My discussions with Mr Cain and Senator Evans were based on the belief that the National Crime Authority Bill would be passed by the Parliament within a fortnight. Although I expressed the view that I should request an extension of my term beyond that which has been currently indicated, it appeared sensible to defer any such decision for a few weeks until the final content of the legislation was known and so it was agreed.

It is now apparent from events in the Senate last week that there will be no Authority set up until at the earliest in May 1984; a fortiori there will be no appointments made and no references to the new Authority until after that date.

As you know, as did the previous Government, the uncertainty surrounding the life of the Commission has made forward planning extremely difficult; by way of example last year my term which was due to expire on 31 December was not extended until 25 December. Such uncertainty is very disruptive to the work of the Commission and harmful to the morale of the staff. Moreover I am finding increasing resistance to my investigations; even with the powers granted to me under the Royal Commissions Act there is growing tendency to impede

my work by lengthy court proceedings which I have no doubt are intended to outlast my term.

In all the circumstances I feel the public interest and the demands of my work require me to request that my Commission be extended to 31 December 1984.

Unless such an extension is granted it will not be possible to maintain the thrust of my investigations or to hand them over to a new Crime Authority in an efficient and sensible manner."

(Letter Commissioner to Acting Prime Minister 17 November, 1983)

9.026 The Victorian Government responded by accepting my suggestion and extending my term to the end of 1984. The Federal Government did not. By a letter dated 16 December 1983 the Prime Minister wrote:

"As you will be well aware our position remains one of concern about the appropriateness of a public Royal Commission Inquiry so far as the ongoing investigation of organised crime is concerned; we remain committed to the establishment as soon as possible of a National Crime Authority to take over on a continuing basis those of your investigations which bear upon organised crime more generally than just in connection with the Federated Ship Painters and Dockers Union.

Although the Senate Committee of Inquiry has injected a degree of uncertainty we still anticipate being able to legislate to create the new Authority with a structure and powers not markedly different from those proposed in the National Crime Authority Bill 1983 by June next. Certainly we would wish you to plan your own activities on the assumption that such a body will be in existence by the end of June.

Against this background the Government would wish you to focus your activity in the next few months upon:

- (a) Concluding those investigations necessary to produce a report upon and recommendations relating to the Federated Ship Painters and Dockers Union which report we would like to receive on or before 30 April, 1984; and
- (b) preparing for the transition to the new arrangements by compiling in a form appropriate for references to the proposed new National Crime Authority such other material relating to organised crime as you feel requires further investigation.

In effect the report referred to in (a) would be your final report except insofar as it is necessary for you to report on the transitional arrangements referred to in (b).

We would propose on this basis that your term be extended - on the same terms and conditions as to fees, staffing and such like as are currently applicable - to 30 June 1984.

It is of course appreciated that some further period may be necessary to ensure that the transition proceeds smoothly in terms of the recruitment and training of personnel, the packaging of appropriate references and the transfer of formal legal authority, and we will be happy to discuss this aspect further with you when the legislative situation becomes clearer after the Senate Committee reports.

We believe however that your own planning should proceed on the assumption that the work of your Commission will, for all purposes other than the bringing to fruition of transitional arrangements, have concluded by 30 June."

(Letter Prime Minister to Commissioner
16 December 1983)

9.027 Before responding to the Prime Minister's letter, other events occurred which increased the workload of my staff. The Chairman and Vice-Chairman of the Senate Committee discussed with my senior assisting counsel in December 1983 whether he would be willing to identify the major issues that arose in respect of the National Crime Authority Bill. He agreed to do so, and in a remarkably short time prepared an extensive document identifying those issues. It is to be found in Appendix 1-H. It was delivered to the Senate Committee prior to Christmas. At that time it was indicated by the Chairman and Vice-Chairman that the Senate Committee would be anxious to view the operational system and techniques of the Commission and would be seeking evidence from myself and my assisting counsel. A letter requesting that assistance was received on 31 January 1984. On 2 February 1984 I wrote to the Acting Prime Minister and the Premier of Victoria reporting on the request of the Senate Committee and stating that I proposed to accede to the request unless there was some objection. No objection was received. At the end of January the briefing of the members of the Senate Committee in the operational procedures of the Commission was undertaken by my senior assisting counsel occurred over a number of days. Later both he and I gave evidence to the Senate Committee.

9.028 On 3 February 1984 I responded to the Prime Minister's letter of 16 December, indicating it was not possible to provide the report requested by 30 April. Although the response is lengthy, I set it out as without it a disjointed view may be formed of matters consequent upon it:

"In previous correspondence and in my interim reports I have explained the very serious situation in respect of the activities of organised crime in Australia. In making such reports I have not been alone. From the personal

conversations I have had with the Prime Minister and indeed from the public statements of the Government it has been clear to me that my description of the situation has been accepted by both your Government and the Victorian Government and for that matter is accepted by all political parties.

The investigations of the Commission as you know are not of minor character. They are extraordinarily complex requiring the examination of hundreds of thousands of documents and taking a lengthy time to complete. Following the Prime Minister's briefing by the Commission on 25 April 1983 and his desire that the Commission concentrate on drug trafficking, those investigations have been directed at what is perhaps the most difficult area of all, the investigation of the financing of major drug importations and distributions in Australia. It was not possible to commence such investigations immediately after 25 April for there were at that time incomplete investigations which I finalised and reported upon in September. Thus the Commission's investigations into the areas requested by the Prime Minister are only a few months old. I am sure the Government did not expect results within so short a time; but in any event they have not been attainable as yet.

The result is that the Commission is presently involved in major investigations into the financing of drug trafficking. Vast quantities of financial documents have been seized and are being examined. That will not be completed for some time yet. It is to be followed by detailed analysis and the examination of witnesses. The work if it is to be done at all will take many months. The staff of the Commission are presently fully engaged upon it, subject to matters which are related hereafter.

There can be no doubt that this work is valuable and that it is in the interests in the public health that it continue. It is for that reason that I recommended, and the Federal Government accepted, that there be a Crimes Authority. Unfortunately such an Authority has not yet come into being. I am constrained to say that the model proposed by the present Bill before Parliament, consideration of which has now been referred to the Senate Committee, will not have the powers or capability to continue the work being done by my staff. In those circumstances even in the event of the Senate Committee approving the Bill in its present form an Authority capable of continuing this work will not come into being. Thus I am confronted with a situation not of my making where I have embarked upon lengthy investigations in which no end is in sight and no relief is at hand.

In addition to the weight of the investigations I and my staff have taken on a further burden. Your Government has made plain the intention that the new Crime Authority bereft of adequate powers and capabilities as it may be will take over my staff and systems by installing me in my new premises and authorising the employment at this late hour of additional staff. I have assumed, correctly I believe, that I am to train the new staff so that when the new Authority comes into being it will have on hand a trained staff at least at lower levels. I have accordingly seen to the training of the new staff. At some cost to current investigations a five week training course for approximately 20 people is being conducted and will be completed towards the end of this month. As you would expect this does involve the time and attention of some of the leading members of staff and has a limiting effect on their output of work on investigations.

Further, I and my senior counsel have been called upon by the Senate Committee to explain in detail the methods and techniques developed by the Commission that has been and is being done. It is time consuming, particularly given the wide nature of the enquiries of that Committee and their inability to attend all at the same time (requiring repetition of briefing sessions which are in themselves lengthy and arduous). Once again the investigative work of the Commission is interrupted and delayed. Nevertheless it is in the public interest that it be done.

In these circumstances I have found it difficult to find the means by which I may meet the request to complete investigations and produce a report on the Ship Painters and Dockers Union by 30 April. The report requested would necessarily be a final report. That would mean that in the space of three months (less excluding Easter) I am expected to complete investigations into the distribution of drugs by members of this Union and write a report. It is quite impossible. The Union in Queensland has been the subject of investigations in this area by both the Australian Federal Police and the Queensland Police for the past four years without reaching into the financial areas. I am a relative "newcomer". Even given the powers I have I cannot hope to penetrate the organisation in that State alone in the time allowed. Much less is it possible to penetrate the organisation in Victoria or New South Wales, notwithstanding that in Victoria my Commission has been examining the situation for some months longer than it has in Queensland. (Both areas are closely related.)

Indeed if I was to write a report and submit it by the time requested it would be necessary for me to terminate now all investigations and confine my report to a statement of the precise position these investigations have reached at this point in time. That would have the effect of destroying the investigations and the momentum they have gained. It would

produce a report without fresh recommendations for none of the investigations has reached a point where the need for changes in law or policy has become apparent. My recommendations would simply traverse the same ground as that which would be found in my previous reports namely that Australia requires a Crimes Authority properly empowered to continue this work on a permanent basis.

Nor is it possible for me to suggest that 30 June would be a more satisfactory date. If I assume that the new Crimes Authority is established by June 1984 and that appointments as Commissioners and Counsel are made by early June 1984, then the balance of June will be spent in the briefing of those appointees in respect of current operations (assuming that the new Authority is able to take on those investigations - an assumption which cannot be made under the present provisions of the Bill). More time would be required to train people at that level in our operational techniques for there are very few people available who have any experience remotely approaching that necessary to continue those techniques. June would be a very busy month. In fact neither of those objectives would be achieved in it. Much less would I have time to write a report. Nor would I have time to attend to the necessary work to return documents and close the Commission.

As I have explained previously it takes a considerable time to brief and train replacements for myself and my senior counsel. Once that training is completed and the new Commissioners and Counsel have taken control, then I will be in a position and will have the time to write a report likely to be of some use to the Government. Until that time is reached it is beyond my capability (or for that matter the capability of any other man). In these circumstances I reluctantly advise that I am quite unable to provide your Government with a report by the end of April. For as long as I am Commissioner the investigations, being of such great importance to the public health, will continue without abatement. Hopefully before my Commission expires

there will come into being a Crimes Authority endowed with powers and capabilities sufficient to enable my investigations to be continued by it."

(Letter Commissioner to Prime Minister
3 February, 1984)

9.029 The Prime Minister responded to this letter on 27 February 1984. It is to be remembered I had made it plain, both publicly and privately, that I would not accept a position on the new Authority. My senior assisting counsel had also announced he would not accept any position. Thus there had to be a change of personnel at the very top of the Authority. The transition, in these circumstances, necessarily involved considerable briefing and training. On 27 February 1984 the Prime Minister responded to my letter:

"I am sorry however to read that you believe that you are unable to comply with my request to provide my Government with a report upon and recommendations relating to the Federated Ship Painters and Dockers Union by 30 April 1984.

While my Government wholeheartedly recognises the value and effectiveness of your Commission I think that I should emphasise our determination to establish a National Crime Authority with a legislative charter more appropriate to the needs of a ongoing organised crime fighting body and to have the necessary legislation in place by June next. As soon as possible thereafter we want the Authority operating and in a position to take over from your Commission.

It was because of this firm objective that I asked you to provide by 30 April a report and recommendations on the matter central to your Inquiry, namely the Federated Ship Painters and Dockers Union.

My Government fully appreciates that a report submitted by that date may not canvass all aspects of the affairs of that Union and its members and those associated with it as fully and in as much depth as, given unlimited time, you would wish. But of course no Royal Commission has unlimited time and in determining the scope and depth of its report or reports every Royal Commission must have regard to the time available to it.

In fact your Commission has been in operation for over 3 years and 4 months and we believe that it is not unreasonable to request that within the next 2 months - or at the very latest by June 1984 we receive from you a report stating such findings as you have been able during the period of your appointment to reach, and such recommendations as you are able at this stage to make concerning the Union itself.

My Government well appreciates that, at the time of the transition to the National Crime Authority, you will be conducting a number of ongoing enquiries and that arrangements will need to be made with the Authority for the continuance of those enquiries. You can be assured that you will be consulted about this as matters develop, and that my Government will cooperate fully in ensuring the continuation of those enquiries.

Certainly it is also appreciated that if any situation arises in the context of some area of ongoing investigation where important documentary or oral evidence will be irretrievably lost unless particular steps are taken, then those steps should be taken.

Having regard to all these matters I must therefore repeat my request that you aim to produce the final report on the Union itself - if not the activities of all its members and associates - by 30 April 1984 and that you continue to prepare for transition to the new Authority by 30 June 1984.

We look forward to concluding the immensely fruitful work of your Commission on the basis of amicable cooperation."

(Letter Prime Minister to Commissioner
27 February, 1984)

9.030

I replied to this letter on 5 March 1984:

"I am sure you will understand that I did not lightly decline the request contained in your letter of 16 December 1983. I believe that is apparent from my letter of 3 February.

I think that before I respond to your recent request I should advise you briefly of some current investigations.

Since the delivery of Interim Report No. 5 I have been concentrating on drug trafficking and the Union. In doing so I have applied the same techniques that I have used in previous areas and on which I have reported. Those investigations have proved illuminating. In close cooperation with the Queensland Police who have done a great deal of work in this area, many painters and dockers have been identified and their systems of importation and distribution are becoming much clearer. Indeed only last week arrests were made and more are expected shortly. These investigations range beyond Queensland, of course, and go into New South Wales and Victoria. At the same time I have been pursuing enquiries into the financing of these dealings. It is in this context I have been looking at major cash transactions in Brisbane, Sydney and overseas, involving among others Mr. Kerry Packer. I have taken evidence from Mr. Packer both publicly and in confidential session. His explanations are quite unsatisfactory, but investigations are not complete and it would be unfair both to him and the public if these investigations were not completed.

As you know from previous correspondence I am anxious both that the new Crime Authority commence operation as soon as possible and that I hand over to it in an efficient manner the investigations I am now conducting. Your Government's determination to establish this body is welcome to me and in the public interest. My concern is there may be a lack of continuity in the investigations. There were some matters arising out of this which I should refer to:

1. The last paragraph of the first page of your letter seems to infer that I have been deficient in not supplying reports to Governments. I have already delivered five Interim Reports over the last three years and four months (the most recent of which was July 1983) each of which as might be expected dealt with the Union in one way or another. A Final Report on the Union would need to deal with the full ambit of my Commission's work and thus would truly be a final report. However it is unlikely to cover new ground so far as the Union is concerned although new criminal activities may be described.
2. On delivering such a report I would return my letters patent. There is authority derivable from my letters patents (Commonwealth or a fortiori Victorian) which would allow me to remain in office for the purpose of transition. I can act under the letters patent only for the purposes of investigation and report. Once this is done my office is at an end.
3. When I commence to prepare my final report the full resources of the Commission would be directed to that task and to the disposal of the material I have acquired. I would be compelled to conduct a hearing of the Commission. At that hearing I would inform all parties that there would be no further evidence. I would then take submissions as to documents. My investigations would

cease at that time. They would be recommenced at the earliest many months later and then only if the new Authority had the powers and decided to do so. Even if it did the break in investigations is likely to be fatal to their success particularly the current drug investigations.

4. The only basis on which an efficient transition can take place is for me to continue my investigations until the Crime Authority is up and running. It would then take them over. I would at that stage write a comparatively short report. I would not be making findings about current investigations; that would be for the Crime Authority. If I put in a Final Report prior to that time any finding I make would be based on evidence which is not complete, which has not been tested by other parties and which has not been assisted by submissions from those persons.

I have thought it desirable to mention these matters so that you and your Government can understand clearly the necessary consequences of your request. Those consequences would be inconsistent with and disastrous to your Government's oft expressed desire to attack sophisticated crime. This may have not been made clear in my last letter."

(Letter Commissioner to Prime Minister
5th March 1984)

9.031 The Senate Committee reported to the Senate shortly after 30 April 1984, and the National Crime Authority Bill was debated in Parliament in late May and early June 1984. It was finally passed after many amendments. In the course of that debate it was again made plain that the new National Crime Authority was intended to take over my investigations and to adopt my operational techniques. Indeed there was considerable discussion of

those techniques during the debate. It is to be remembered that the members of the Senate Committee had been fully briefed upon them, and the Bill was passed by the Senate on the understanding that those were to be the techniques employed by the new Authority.

9.032 On 21 June 1984 I received a further letter from the Prime Minister. He noted the passage of the legislation and the intention that the new Authority would be established on 1 July:

"As agreed with you it is intended that the Royal Commission continue its investigations until the establishment of the NCA on 1 July. During the month of July the Commission will work together with the NCA passing on to it information about material held by your Commission and techniques employed by you. During August and September your final report to the Government will be prepared with the report being presented to the Governor-General by 30 September.

I am advised that your Commonwealth letters patent will need to run to the date by which your final report is to be presented. To this end the Government is extending the reporting date of your Royal Commission to 30 September 1984. Action is in hand to obtain formal approval to this extension from the Federal Executive Council.

As indicated by the above arrangements, one of the major objectives in establishing the NCA is for the Authority to preserve the records and techniques of your Royal Commission and to ensure the continuation of its work. In particular it is intended that the first references for investigation to the NCA should cover, inter alia, relevant outstanding matters arising from your enquiries.

To this end I should be grateful if you could, as a matter of urgency, give consideration to what matters are now outstanding. In accordance with your Commission's previous practice, it would be appreciated if those matters which you consider to be amenable to ordinary police methods could be referred directly to the relevant police forces. As to any matters then outstanding I should be glad if you would supply information to the Government in sufficient detail to enable appropriate draft references to be prepared to be put to the Inter-Governmental Committee.

References to the Authority are required by the NCA Act to include:

- . A description of the general nature or the circumstances or allegations constituting the relevant criminal activity;
- . A statement that the relevant offence is or the relevant offences are or include an offence or offences against a law of the Commonwealth, State or Territory but without needing to specify the particular offence or offences; and
- . the purpose of the investigation.

In preparing the material for Government as to possible references it would be appreciated if you would address these matters and in addition supply any other material appropriate to be put to the Inter-Governmental Committee when it considers the proposed reference. It would facilitate the transition between your Commission and the Authority's investigations if the information supplied by you on these outstanding matters could be received as a matter of urgency but at the very latest by 13 July.

I should like to place on record again the Government's gratitude for your work as Royal Commissioner. I should also like to offer my condolences on your recent illness. It is of course unfortunate that it has cut short the time remaining for your enquiries. I

also appreciate the onerous nature of the task of finalising your work over the coming months. Nevertheless it is of paramount importance that the significant work initiated by your Commission should be continued by the NCA. Your cooperation in ensuring its smooth transition to the NCA will be of the utmost importance in achieving this objective."

(Letter Prime Minister to Commissioner
21 June 1984)

9.033 As I have reported elsewhere, I had been hospitalised a week after Easter and had remained in hospital for some weeks. The operations of the Commission were naturally affected adversely by my lack of attendance. I returned to the Commission at the beginning of June, but was still recuperating from my illness.

9.034 The new proposal was one which imposed a considerable workload upon me and my staff. I was to examine my current operations to determine whether they came within the National Crime Authority Act and was to do so within two weeks. This task was made more difficult by the unavailability of a copy of the Act until the beginning of July. I was to train the new Commissioners, and the heads of their operations, in the investigative techniques and brief them on complex operations within the space of one month. At the date of receipt of the Prime Minister's letter I did not know who the new Commissioners would be. Nevertheless both I and my staff set about doing what we could to facilitate the establishment of the new Authority. My senior assisting counsel in the absence of a copy of the Act (he had a copy of Bill but it had been substantially amended) prepared a list of current operations using his imagination as to the likely criteria. When it became known that Mr. Justice Stewart had been appointed as Chairman that list, together with some notes on each of the operations, was forwarded to him.

9.035 By 22 June 1984, on which day its first meeting occurred, there had been established the National Crime Authority Steering Committee, comprising the Chairman, myself, the Secretart of the Department of the Special Minister of State, Mr A.D. McGaurr and Mr Menzies. The formation of this committee had been forecast in a letter to me of 13 June 1984 from Mr McGaurr. At that time it was not proposed I should be on the Committee. There was also to be established a task force comprising representatives of my Commission as well as from many other departments and from the Stewart Royal Commission. Nevertheless it was recognised that one of the major objectives of the Authority was to maintain intact the resources and expertise of my Commission and to ensure the continuation of its work. The shortness of time was also appreciated by Mr. McGaurr:

"Legislation to establish the NCA has been passed by the Parliament. The Government has, on several occasions, stated that it is its firm intention to have the Authority established by 1 July.

The Government has also stated that one of the major objectives of the NCA is to maintain intact the resources and expertise of your Royal Commission and to ensure the continuation of its work. Accordingly the Government has as you know agreed that the month of July will be a transition period during which your Commission will hand over to the NCA.

As you will no doubt appreciate the task of establishing the Authority is considerable and the timing is likely to prove very tight indeed."

(Letter Mr McGaurr to Commissioner
13 June 1984)

I raised with Government the question whether, if the Authority was taking over operations, it would not be desirable that I joined the steering committee. This was accepted and, by the first meeting on 22 June, 1984,

I had become a member. During the meeting I emphasised the necessity for the earliest possible appointment of members so that the limited briefing period of July could be fully utilized. I raised the need for the appointment of counsel to conduct the investigations, and drew particular attention to the special skills required at that level. The minutes included the following warning:

"Mr Costigan pointed to the urgent need to take decisions and make necessary appointments because of the clear impact on the handover/briefing programme he had in mind. He was particularly concerned over the need to put draft references together , in line with the Commonwealth Government's request, in addition to handing over and writing his report in the period remaining available to him."

(Minute Steering Committee 22 June 1984)

9.036 Subsequently a copy of the Act came to hand. It was subjected to analysis by my senior assisting counsel to determine the criteria to be satisfied in order for a matter to constitute a relevant criminal activity within its meaning. A copy of the analysis was forwarded to the newly appointed Chairman. A further analysis was made to determine the material required to be placed before the Inter-Governmental Committee when it considered a proposed reference. An analysis of the Act revealed it was difficult to meet the several objectives of the Act. On the one hand the Act required there be no public disclosure likely to harm reputation. A copy of the reference was to accompany every summons issued by the Authority. Accordingly if a reference identified any person by name, there would be a real likelihood of the reputation of the person so named

being harmed by the mere issue of summonses. Yet not to name a person in a reference effectively precluded the grant of a narrow reference. An examination of the debate in Parliament indicated it was Parliament's wish that references be of narrow compass and be subject to the approval of the Inter-Governmental Committee. The purpose was to restrict the operations of the NCA. My senior assisting counsel and I found it impossible to draft a narrow reference without identifying by name the people suspected of the criminal activity. The omission of their names produced a reference of extraordinary width.

9.037 The analysis identifying these problems was forwarded to the Chairman of the new Authority who in turn made it available to the advisors of the Attorney-General. They resulted in a meeting taking place between Mr. Andrew Menzies, then consultant to the Attorney-General, and my assisting counsel and myself. In the course of that meeting discussion took place as to how the reference could be drafted. It resulted in it being agreed that my staff would produce the material identifying the relevant criminal activities leaving it to a draftsman in the Attorney-General's Department to resolve the problem relating to the drafting of a reference.

9.038 In those circumstances counsel assisting me examined the operations of the Commission for the purpose of identifying "relevant criminal activities" which satisfied the criteria of the Act. The Act was "offence specific", whereas the operations of my Commission had been "person specific". Thus it was necessary to view the operations in an entirely different light from that which was the normal practice in the Commission. I explain further the difficulties of doing this in Volume 2 of this Report. It took a considerable effort on the part of my assisting counsel to convert the description of operations into that required by the Act. It was far from a simple task. Not

only was there a drafting difficulty; there was also the problem of ensuring that in a real sense the criteria of the Act could be satisfied. I was not prepared, nor were Counsel prepared, to pay mere lipservice to that criteria. In the end, by a date close to 13 July, the task was finished. Some 40 relevant criminal activities were described. Subsequently and not surprisingly, a further 2 relevant criminal activities were identified and described.

9.039 Having produced the material it was necessary to determine the means authorised by law by which I could transmit the material to the National Crime Authority. Section 6 P(2A) of the Royal Commissions Act provides that I may transmit information to the NCA only where it relates "to an investigation being conducted" by it. The NCA was not conducting any investigation. Accordingly I could not properly form the opinion that it was. Thus that provision did not permit me to make the transmission requested by the Prime Minister, nor was I assisted by section 56 of the National Crime Authority Act which had been inserted in response to my specific request that there be a direction by Parliament that my database be made available to the Crime Authority. Section 56 was of no use in this situation for it did not have effect until the termination of my Royal Commission. Even then, it does no more than give a power to the NCA to take possession of documents and other materials.

9.040 In this situation I requested advice be sought from Sir Maurice Byers Q.C., the former Solicitor-General who was instructed to provide an opinion as to the proper course of action to follow. He confirmed my view that section 6P (2A) did not permit the direct transfer of the information; and that section 56 of the National Crime Authority Act was of no value in this transitional period.

He expressed the opinion that I could rely upon a provision in section 6P(1) of the Royal Commissions Act by which I could forward the summaries of the relevant criminal activities to the Attorney-General even though it was only for the purpose of the Attorney-General forwarding it to the NCA. I had my reservations as to the propriety of that course; but, upon Sir Maurice Byers advising that he saw nothing improper in it being done, on 17 July 1984 I handed the material to the Attorney-General and I understand he immediately passed it on to the National Crime Authority.

9.041 In a letter dated 18 July 1984 signed by the Chairman of the National Crime Authority I was informed the Authority had resolved that the material in the matters forwarded through the Attorney-General was regarded by it as relating to relevant criminal activities, and it resolved to investigate them pursuant to section 11(1)(b) of the National Crime Authority Act. A copy of the resolution was set out in the letter and was in these terms:

"The Authority resolved that in order that the Authority might investigate matters relating to relevant criminal activities arising out of the material forwarded to the Authority by the Commonwealth Attorney-General on the 17 July 1984 Mr. F.X. Costigan Q.C. be requested to make available to the Authority for this purpose all documents and other materials that relate to the Inquiry conducted by him as Royal Commissioner and that are in his possession or under his control as Royal Commissioner."

(Resolution Steering Committee
18 July 1984)

9.042 Some of the matters described in the Memoranda of Relevant Criminal Activities were included only by reason of the operation of section 4(2) of the National Crime Authority Act. That provision could operate only upon the

Authority forming the relevant suspicion. My senior assisting counsel later drew the attention of one of the members of the Authority to the failure of the resolution to record that the relevant suspicion had been formed. Following that, by a letter dated 23 July 1984 signed by the Chairman of the Authority, I was informed of a subsequent motion at another meeting of the Authority which was in the following terms:

"On the motion of the Chairman the Authority resolved that arising out of the material mentioned in paragraph 2 of the Minutes of the Inaugural Meeting of the Authority, in addition to the matter mentioned in paragraphs 3 and 4 of the said Minutes, the Authority, pursuant to Section 4(2) of the Act suspects that offences which are not relevant offences as defined in Section 4(1), may be directly or indirectly connected with or may be part of a course of activity involving the commission of a relevant offence so defined."

(Letter Chairman NCA to Commissioner
23 July 1984)

9.043 By Section 6P(2A) of the Royal Commissions Act, where I had obtained information, taken evidence or received a document that in my opinion related to an investigation being conducted by the NCA, I might, if in my opinion it were appropriate to do so, communicate the information to the NCA. In determining whether I should form the requisite opinions, I took the view that I should accept the resolutions of the NCA on their face and not enquire further. Given those resolutions, and understanding as I did that they referred to the 40 matters which, at that stage, had been forwarded to the NCA, I formed the opinion that all of the information I held, comprising oral evidence documents and records on computer tape, did relate to investigations now being conducted by the NCA and it was appropriate to communicate the information to it. Thus I authorised the Commissioners of the NCA in their capacity as

Commissioners to access the database and to inspect the files of the Commission.

9.044 It will be observed that this was not achieved by 13 July 1984 as the Prime Minister had requested. However it was achieved in the shortest possible time, having regard to the strictures of law and the extent of the work involved.

9.045 At this point it is appropriate I deal with the ultimate consequences of the delivery of the relevant criminal activities memoranda. In the issue of the National Times of 14-28 September 1984, and in subsequent issues, extracts from the memoranda were published with the names of the individuals veiled, but the activities described in such a manner as to allow easy recognition of the individuals, immediately by those concerned, and ultimately by the public. The memoranda had fallen into the hands of the National Times by an unauthorised disclosure. I do not believe it was released from the Commission premises, nor by any of the Commission staff. A police investigation has yet to establish how the disclosure occurred.

9.046 As I have recorded earlier, the task imposed by the Prime Minister was to facilitate the transfer of the current investigations to the new Authority. Up until the passage of the National Crime Authority Act, I had expected to effect the transition with a minimum of fuss. I had asked for a statutory direction that my data base be transferred, and for substantial time for oral briefings of the new staff. Had it been done in this fashion, the memoranda of relevant criminal activities would not have been prepared. Indeed, little more would have been in writing than the list of 29 matters forwarded directly to the Chairman of the Authority upon his appointment. Even within my Commission there was no document reducing the

investigations into the terms found in the memoranda later published in the National Times.

9.047 However, disastrous though the experience has been, it does have the benefit of drawing attention to a major defect in the scheme of the National Crime Authority Act. It is a defect which, despite lengthy debate, has yet to be fully recognised.

9.048 All other agencies engaged in law enforcement commence their investigations without the necessity of first justifying in writing the reason for the investigation. There is no legal requirement. If there is an operational requirement, it is usually met by an oral briefing. The explanation is simple enough. At the commencement of an investigation very little is known. What is known is usually mere suspicion. To demand that the investigator develop an exposition as to why he is initiating an investigation at such an early time is to compel him to record his suspicions and construct an elaborate edifice on what may ultimately prove to be an unsound foundation. If such a case is made in writing, the resulting document attracts a status far above that intended and what is no more than suspicion may be converted into concluded views. There is little doubt that was the fate of the memoranda I transmitted to the Attorney-General. It is a course to be avoided no matter what the cost may be. I add that there is little point in railing against the media should it happen upon such writings and publish them; it is a fact of life in Australia, and in all other free countries, that there is a free Press which will publish such matters without regard for the consequences.

9.049 The National Crime Authority Act imposes the task of reducing suspicion and allegation to writing by law. The Authority is limited to investigating matters defined as "relevant criminal activities". The definition

is based upon "circumstances implying" or "any allegations" that offences characterised by the relevant criteria have been committed. An "allegation" is not a conclusion; a "circumstance implying" is not the same as a circumstance compelling a conclusion. The degree of satisfaction is deliberately low, and encompasses matters which, on investigation, may fail to establish that a relevant offence has been committed. This is understandable. After all, the Authority is required to investigate. If the answer is known at the commencement, no investigation is necessary.

9.050 Having been compelled to allow as the basis circumstances uncertain in their inference, and allegations the veracity of which has yet to be tested, the Act provides that the coercive powers will be granted only upon the Inter-Governmental Committee being satisfied it is proper so to grant. One aspect of satisfaction is that ordinary police methods will not suffice. All governments in Australia at Federal and State levels are invited to participate. It follows, necessarily, that the "circumstances" and the "allegations" will be reduced to writing and submitted for consideration to the participants. Thus there will come into being documents which record, in a formal and no doubt compelling manner, matters of which the factual basis has yet to be examined, let alone tested. These documents will be sent to all of these governments. Their security cannot be guaranteed. I believed I had ensured security with the passage being merely from me to the Attorney-General, and then to the National Crime Authority. Yet it was breached. How much greater the probability of this where distribution is so much wider.

9.051 The problem is not merely that of wide distribution. If a reference is granted, there is a mandatory requirement imposed by sections 13(2)(a) and 14(2)(a) that the document containing the reference

"describe the general nature of the circumstances or allegations". Thus these untested and inconclusive circumstances, or possible unfounded allegations, are to be recorded in the reference itself. By section 28(3) a copy of the document is to be attached to every summons issued. Thus the document is to be published.

9.052 There will be those who may attach significance to the words "general nature" found in those subsections imposing the requirement that the circumstances and allegations be described. I find little comfort in their inclusion. If the purpose of the requirement is to be met there must be sufficient particularity given to ensure the "circumstances" and "allegations" are identifiable and do point to a criminal activity. Thus the requirement imposes disclosure of matters asserting crimes when, after investigation, it may be found the basis is false. There will be those who will seize upon these documents, publish them, and allow, perhaps by innuendo, perhaps by blatant assertion, the identification of those involved in the criminal activity to become known. The mere service of the summons, calling for production (perhaps) of documents relating to an individual named within it, will give rise to the supposition that the named person is the culprit.

9.053 The memoranda of relevant criminal activities prepared and delivered by my Commission were the result of intensive and deliberate attention to the requirements of the Act in describing relevant criminal activities. They went no further than was believed necessary, having given the Act due and proper study. Others will provide the same degree of particularity, and will act on the same, or lesser, material (I say lesser since in my case many were the result of investigations I had conducted). Their release in the community will do great harm to individuals as has the release of mine. Yet this Act, born out of an honest but misguided attempt to protect reputation, by this

measure has allowed the worst possible situation to arise by which reputations may be destroyed without justification. Had the statutory requirements been otherwise the adverse and unjust consequences which have befallen a number of people could have been avoided.

9.054 I recommend that the strategy of the National Crime Authority Act be changed so as to do away with the requirement for a reference, and so remove any requirement that at the commencement of an investigation there be recorded the circumstances implying offences, or allegations of offences. Other techniques for the control of the Authority are required.

9.055 The transmission of the relevant criminal activities in documentary form was not the only problem in the transition. Another was the lack of time to conduct proper briefings. Much has already been debated on this in the national Parliament, and the correspondence between me and others concerning it has been published. It is unnecessary to add to what I said in that correspondence. I merely record that operational briefings did not take place, although in the last days of the Commission, whilst this report was being printed, copied and bound, my senior instructing counsel was able to give a little time to this matter.

9.056 As I look back on the last four months of my Commission, it is plain that it was never feasible to commence a new Authority as mine ended, and expect it to continue the operations without there being a substantial hiatus. The methods of operations, the systems, and the philosophy of the work done by my Commission was far too removed from the experience of those newly appointed for it to have been reasonable to expect there would be a rapid assimilation of those matters by them.

9.057 This had been demonstrated earlier, when Mr Robert Redlich was appointed as Special Prosecutor at my instigation for the purpose of prosecuting and taking civil actions as matters were investigated by my Commission. It was some months before he gained a full appreciation of the techniques being employed and the objectives being sought. Those months were marked with misunderstandings on both his and my parts; but within twelve months a much better understanding, and cooperation, was achieved.

9.058 Mr Redlich, and Mr Gyles Q.C., were then replaced by Mr Temby Q.C., as Director of Public Prosecutions. Once again the same problem arose. He, together with a number of other significant people, lacking any knowledge of the objectives being sought and the means adopted to achieve them, interpreted the role of the Commission in terms of a police force. He joined others in the erroneous assumption that the material on which the Commission acted was "inadmissible", or to cite a later description, was "anecdotal". In fact the material on which I acted could not be of greater substance. It lacked free admissions of guilt, but otherwise was readily admissible in Courts of law (as many cases have established), and was in no manner "anecdotal". Yet such comments were made by Mr Temby QC and others, notwithstanding their unfamiliarity with the matters.

9.059 Precisely the same situation arose with the commencement of duties by the new Commissioners of the Crime Authority. It was only towards the end of the last four months any real appreciation was formed of the philosophy and techniques developed in my Commission. By this time, of course, the operations of the Commission had been suspended.

9.060 In this sense, the transition failed. I hope that the techniques will not be lost, and some appreciation of their value will be gained. The result of the difficulties in transition has been a report of far greater dimensions than I had hoped would be the case. I have reported at length on the philosophy and techniques. I deliver with this volume many other volumes detailing the extent a number of operations have reached, so that they may be continued in the future. In themselves they represent the product of that philosophy and those techniques. For that reason I have recommended they remain confidential, at least until the investigations and legal proceedings which are proposed in them have been concluded.

CHAPTER 10 - SUMMARY OF RECOMMENDATIONS

Introduction

10.001 I have consolidated in this chapter the recommendations appearing in the several volumes of my report.

10.002 The recommendations summarised in this chapter should not be read in isolation from the volume of the report in which they are primarily found. This did occur in respect of the Fifth Interim Report, and led to a number of misinterpretations which would not have occurred had the critics known the circumstances in which the recommendations had been made. This should not be allowed to occur.

10.003 Insofar as the confidential volumes are concerned, my recommendation that they be kept confidential does not mean that I counsel their concealment from those whose advice or action is required to implement the recommendations within them. The relevant confidential volume should be made available to such people.

10.004 For convenience I have summarised the recommendations under the headings of the volumes in which they are to be found.

Volume 1 - THE WORK OF THE COMMISSION

Perjury

10.005 I recommend that the provisions of the Royal Commissions Act 1902-1984 be amended so as to delete the requirement that the false answer be shown to be "material" to the Inquiry.

10.006 I recommend that the Royal Commissions Act 1902-1984 be amended so as not to exclude the application of State laws relating to perjury where a joint Commission is being conducted.

National Crime Authority

10.007 I recommend that the requirement of a reference being granted by the Inter-Governmental Committee, and its attachment to every summons issued by the Authority, be repealed, and that there be no control of the Authority based upon or requiring the compilation of "circumstances implying" or "allegations" of criminal offences at a time when an inquiry is commencing.

Volume 2 - INVESTIGATORY TECHNIQUES

Systems

10.008 I recommend that the computer systems comprising the computer tapes, manuals and volume two of this report be made available to all law enforcement agencies for their use as they see fit. In particular, I recommend they be provided to the Victorian Police Force, especially the Bureau of Criminal Intelligence, the Victorian Commissioner of Corporate Affairs and other law enforcement agencies in Victoria. Upon those systems being converted to a fourth generation language, I

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recommend that the Commonwealth of Australia make them freely available to all State police forces and other law enforcement agencies.

10.009 I recommend that the data base (excluding material derived from taxation records) be made available to the Australian Federal Police and the Victorian Police Force, and to the Victorian Commissioner of Corporate Affairs.

10.010 I recommend that there be a study made of the appropriate guidelines to be issued to all law enforcement agencies in respect of the selection of targets for proactive law enforcement, and that upon such guidelines being determined, they be issued as guidelines by the Ministers responsible for Police in both the Commonwealth and the State of Victoria for the guidance of their respective police forces.

Civil Proceedings by the Director of Public Prosecutions

10.011 I recommend that the Director of Public Prosecutions be empowered to initiate civil actions on behalf of the Government (Commonwealth) irrespective of the stage reached in criminal prosecutions.

Volume 3 - THE UNION

10.012 I recommend that there be enacted by agreement between the Commonwealth and the States laws similar in nature and to the same effect as have been enacted in the United States of America in the Labor-Management Reporting and Disclosing Act of 1959, and that otherwise the commission of extortionate practices by members of trade unions not be the subject of the ordinary crime of extortion.

10.013 I recommend that the Commonwealth and the States enact laws prohibiting a person holding office in a union for a period of five years following conviction for an indictable

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offence. Such laws should imitate the existing provisions prohibiting like persons holding office in companies.

10.014 I recommend that there be enacted by agreement between the Commonwealth and the States laws similar in nature and to the same effect as have been enacted in the United States of America in the Racketeer and Influenced and Corrupt Organisations Statute.

10.015 I recommend the establishment at each port or in the case of small ports, for each group of ports, of a Port Security Authority, to act as an intelligence gathering and dissemination agency. Detailed recommendations as to the functions and operations of this Authority are to be found in Chapter 5 of Volume 3.

Volume 4 - SP BOOKMAKING

10.016 I recommend that the Lotteries Gaming and Betting Act 1966 (Vic) be amended so as to include an offence of "possession of instruments of betting", and that the powers of arrest be clarified.

10.017 I recommend that the penalty for illegal bookmaking be increased so as to provide a fine of \$25,000 on a first offence; \$100,000 maximum and \$25,000 minimum on a second conviction; and \$250,000 maximum and \$50,000 minimum or three years' imprisonment on a third or subsequent conviction.

10.018 I recommend that the Lotteries Gaming and Betting Act 1966 (Vic) be amended so as to make it an offence to give a false name and address when questioned by the police in respect of illegal gambling.

10.019 I recommend that the Lotteries Gaming and Betting Act 1966 (Vic) be amended so as to render it an offence to

place a bet with illegal bookmakers, and that the penalty for doing so be a fine of \$25,000.

10.020 I recommend that on conviction of the offence of illegal bookmaking, the offender be liable to turnover tax (in addition to any other penalty imposed) computed, in the absence of evidence to the contrary, on presumption that the amount of turnover found on the day of the offence was the average daily turnover for each racing day of the preceding year.

10.021 I recommend that the State of Victoria establish a small office charged with the responsibility of recovering turnover tax from those convicted of illegal bookmaking, and that such office work in close association with the members of the Victorian Police charged with enforcement of the gaming laws. I further recommend that the Australian Taxation Office allocate investigators to assist with this office, its function being to recover income tax.

10.022 I recommend that there be a reference by all State Governments to the National Crime Authority to investigate illegal bookmaking throughout Australia.

10.023 I recommend that in addition to the investigations of the National Crime Authority the Australian Bureau of Criminal Intelligence coordinate the gathering of intelligence throughout Australia on the operations of illegal bookmaking and race fixing.

10.024 I recommend that Telecom grant access to law enforcement agencies to the SCRP machine facility.

Volume 5 - THE DRUG TRADE

10.025 I recommend the establishment of a Taxation Investigation Tribunal. Details as to its functions and powers are to be found in Volume 5.

Recommendations

10.026 I recommend the establishment of a Taxation Investigation Officer. Details as to his functions and powers are to be found in Volume 5.

10.027 I recommend that the drug activities of Barry Richard Bull and his associates be the subject of investigation co-ordinated by the National Crime Authority, and that the Authority be granted a reference to conduct its own investigations. In the event of my recommendation as to a Taxation Investigation Tribunal being accepted, I recommend that Bull and his associates be investigated by that tribunal.

10.028 I recommend that the activities of the solicitor Robert Cartwright (of the firm Power and Cartwright, Noosa, Queensland) be referred to the Queensland Law Society for appropriate action.

Volume 6 - LOCKYER & McCARTHY and another (name suppressed as person is awaiting trial)

10.029 I recommend further investigations and the initiation of criminal proceedings as set out in sub-paragraphs 1-3 of paragraph 7.005 of Part 1; and sub-paragraphs 1-3 of paragraph 13.011 of Part 2.

10.030 I recommend that the office of Justice of the Peace held by the person the subject of Volume 6B in New South Wales be terminated.

10.031 I recommend that the activities and affairs of the persons the subject of Volume 6B be closely monitored by all relevant law enforcement agencies, and in particular the National Crime Authority, the Australian Taxation Office, State and Federal Police forces, Corporate Affairs Offices, the Australian Customs Service, Bankruptcy Offices and law enforcement agencies in the United States.

10.030 I recommend that the Crimes Act of the Commonwealth and the State of Victoria be amended to render it an offence to fail to report knowledge or information of criminal offences where the offence is one punishable by imprisonment for a period of not less than three years.

10.031 I recommend that the structure, organisation and methods of Bankruptcy and Corporate Affairs offices be reviewed to provide proper equipment and facilities (including the development of a computer based information storage/retrieval/analysis system) for satisfactorily enforcing the provisions of their respective Acts.

10.032 I recommend that the Bankruptcy Act be amended:

- (a) to provide specifically that the Official Trustee may investigate trusts, companies, businesses, partnerships and other entities suspected of being financially associated with the Bankrupt or any member of his family;
- (b) to rectify the apparent anomaly appearing in Section 269(b) by making it an offence to carry on business in the bankrupt's own name without disclosing to the person with whom he deals that he is an undischarged bankrupt. I recommend the words "in his own or" be added after the word "business" first appearing;
- (c) to render it an offence to fail to disclose to the Registrar in Bankruptcy or the Official Trustee all banks, building societies, credit unions, credit and other accounts in any name used by, on behalf or for the benefit of the bankrupt.
- (d) to require the bankrupt to supply to the Official Trustee quarterly statements of all deposits into and drawings from such accounts.

Volume 7 - SOME DRUG CONNECTIONS

10.033 I recommend a Royal Commission into the matters which are the subject of Volume 7.

Volume 8 - (Name suppressed as person is awaiting trial)

10.034 I recommend that the Building Societies Act 1976 (Vic) be amended:

- (a) to repeal Section 110;
- (b) to widen the definition of director so that it is in the same terms as that found in section 5(1) of the Companies Code;
- (c) to amend section 24 by insertion of the word "alone" after the words "board of directors";
- (d) to add provisions disqualifying certain persons from participating in the management of building societies on grounds similar to those disqualifying persons from participating in the management of companies;
- (e) to add provisions by which a Court may prohibit persons from engaging in the management of building societies.
- (f) to add provisions similar to those in the Securities Industry Act requiring any person who wished to manage a building society to be first licensed as a fit and proper person to do so;
- (g) to allow the Court to appoint a Receiver of a building society on the application of the Registrar;
- (h) to impose upon officers of a building society the same duties backed by similar penalties to those found in sections 228-230 of the Companies Code.

- (i) to extend the provisions of section 908 so as to require a bond of indemnity from officers of building societies in amounts between \$500,000 and \$1 million, depending upon the cash flow of the particular society.
- (j) to amend section 101 so as to relieve building societies of penalty in the event of default, but to inflict the penalty on those responsible for its management.
- (k) to extend the provisions so as to empower the Registrar with access to financial records of the society and of banks and other persons with whom the society deals in like manner to the powers granted to investigators of the Commissioner of Corporate Affairs.
- (l) to empower the Registrar to conduct hearings, administer the oath, and conduct investigations where mal-administration of a building society is suspected.

10.035 I recommend that the investigative staff of the office of the Commissioner of Corporate Affairs be available to the Registrar of Building Societies to assist in the conduct of investigations.

10.036 I recommend that Section 9 of the Bail Act 1977 be amended so that sub-section 2 provides:

"where a surety desires to use real estate of which he or she is the registered proprietor as valuable security in any application for bail of an accused person before the release of the accused person the following must be provided to the court by the surety -

- (a) The certificate of title for the property which is to be used as the security or a certificate from the office of the Registrar of Titles

attesting to the proprietorship of the surety;

- (b) where any mortgage or other encumbrance exists over the property, a document from the mortgagee or other person entitled to the benefit of such encumbrance, caveat or otherwise, describing the nature of the encumbrance and the effect if any on the value of the property;
- (c) a document containing a sworn valuation by an accredited real estate valuer as at the date on which the application for bail is made.

Volume 9 - ACTIVITIES OF RAY/PACKER

10.037 I recommend that the matters described in chapters 2 to 5 be referred to the Director of Public Prosecutions (Commonwealth) for completion of the investigation and the initiation of criminal proceedings.

10.038 I recommend the establishment of a joint task force comprising police officers of the Australian Federal Police, the New South Wales Police and the Queensland Police supported by officers of the Australian Taxation Office and the Corporate Affairs Commission of New South Wales and the Corporate Affairs Office of Queensland, to investigate the matters described in chapters 6 to 10.

10.039 I recommend that the Commonwealth of Australia advise the New South Wales Government of my recommendation that the criminal charges on which Phillip Kingston Carver presently awaits trial should be discontinued.

10.040 I recommend that all of these investigations be under the supervision of the National Crime Authority and that consideration be given to the grant of a reference to allow their proper completion.

Volume 10 - DEATH OF COOTE

10.041 I recommend that the joint task force referred to in paragraph 10.026 investigate the circumstances of the death of Ian Percival Coote to prepare evidence to be led at an Inquest into that death, and to explore the other matters referred to in Volume 10.

10.042 I recommend that the selection of the joint task force recommended in paragraphs 10.026 and 10.029 be in accord with the criteria recommended in paragraph 15.006 of Volume 10.

10.043 I recommend that the Commonwealth of Australia transmit to the Government of Queensland Volume 10 of this Report, and my recommendations that there be an Inquest into the death of Ian Percival Coote.

Volume 11 - HASHISH OIL

10.044 I recommend that the Australian Federal Police investigate the matters contained in Volume 11 of this Report.

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