



PUBLIC ACCOUNTS AND EXPENDITURE
REVIEW COMMITTEE

**FOLLOW-UP REPORT ON
THE WESTERN AUSTRALIAN TOURISM
COMMISSION SPONSORSHIP AGREEMENT
WITH GLOBAL DANCE FOUNDATION INC.
REPORT No. 36**

Report No. 38

1998

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Presented by:
Mr M W Trenorden, MLA
Laid on the Table of the Legislative Assembly
on 29 October 1998

ORDERED TO BE PRINTED

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COMMITTEE'S FUNCTIONS AND POWERS

The Committee obtains its powers and functions from the Standing Orders of the Legislative Assembly. Standing Order 412(1) states that the functions of the Committee are -

... to inquire into, consider and report to the Parliament on any proposal, matter or thing connected with the receipt and expenditure of public moneys, including moneys allocated under the Annual Appropriation Bills and the Loan Fund.

Moreover the Committee is empowered by Standing order 412 (2) -

- (a) to examine the public accounts transmitted to the Assembly by the Auditor-General;
- (b) to examine the financial affairs and accounts of Government Agencies of the State whether or not such accounts have been audited by the Auditor-General;
- (c) to examine all reports of the Auditor-General, copies of which have been laid before the Assembly;
- (d) to inquire into, and report to the Assembly on any question which -
 - (i) it deems necessary to investigate;
 - (ii) is referred to it by a resolution of the Assembly;
 - (iii) is referred to it by a Minister of the Crown, or
 - (iv) is referred to it by the Auditor-General;
- (e) to report to the Assembly from time to time, any alteration which the Committee thinks desirable on any matter relating to the form of those accounts or in the method of keeping them or in the mode of receipt, control, issue or payment of public moneys;
- (f) to inquire into expenditure by a Minister of the Crown made without Parliamentary sanction or appropriation and report to the Assembly from time to time, upon any matter connected with that expenditure which the Committee considers ought to be brought to the notice of the Assembly;
- (g) to consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine; and
- (h) to consider whether the objectives of public expenditure are being achieved or may be achieved more economically.

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MAX TRENORDEN, MLA
CHAIRMAN

29 October 1998

INTRODUCTION

The purpose of this report is to follow-up and briefly comment on responses, both Ministerial and agency specific, to the Public Accounts and Expenditure Review Committee's, ("The Committee") 1998 Report on *The Western Australian Tourism Commission Sponsorship Agreement with Global Dance Foundation Inc. - World Dance Congress 1997*.

The Committee's report was the culmination of one of the most highly publicized inquiries ever undertaken by a Public Accounts and Expenditure Review Committee. The terms of reference for the inquiry, which was self-initiated by the Committee, were to inquire into: the extent to which the feasibility of the project was determined; the extent to which the State's financial interests were protected by proper legal scrutiny and contractual processes; and the extent to which the likely effectiveness of the sponsorship was assessed by adequate consultation with key stakeholders in the Arts community.

During the inquiry process, the Committee dealt with a number of challenges relating to the investigation of certain facts and other obstacles in its information gathering process which resulted in 36 findings and 5 recommendations, (see Appendix One).

FOLLOW-UP ACTION

A formal mechanism exists within the Committee's Standing Orders that requires the Government to respond to the recommendations of the Committee's reports. Standing Order 414 (5) states that -

Where a report of the Committee recommends that a particular action be taken by the Government with respect to a matter, the appropriate responsible Minister of the Crown, shall, as soon as practicable, but within not more than three months, or at the earliest opportunity after that time if Parliament is in adjournment or recess, report to the House as to the action (if any) proposed to be taken by the Government with respect to the recommendation of the Committee.

Following the tabling of the Committee's report on 4 February 1998, a Ministerial response, (see Appendix Two), was tabled in the Legislative Assembly on 5 May 1998. The introductory remarks to the response read as follows:

At page xvii of the...report ("the Report") the Public Accounts and Expenditure Review Committee ("PAERC") requests the Premier, Treasurer and Ministers for Tourism and Fair Trading to respond to the PAERC's recommendations. In response to that request the following responses are provided.¹

In June 1998, the Chairman of the Committee, Mr Max Trenorden, MLA received correspondence, (see Appendix Three), from the Director General, Ministry of the Premier and Cabinet, Mr Mal Wauchope on the suggestion of the Commissioner for Public Sector Standards, Mr Don Saunders.

This correspondence included comments made by both Mr Saunders and the Chairman of the

¹

Ministerial Response to the Public Accounts and Expenditure Review Committee's Report on the Western Australian Tourism Commission Sponsorship Agreement with Global Dance Foundation Inc., Tabled Paper No.1378, 5/5/98, p.1

Western Australian Tourism Commission, (WATC), Mr Kevin Carton, on aspects of the Committee's report, (see Appendices Three to Seven).

EXAMINATION OF RESPONSES

The Committee has examined and analysed both the Ministerial response and the response by the WATC. The responses commented generally on the Committee's findings and recommendations and agreed on some of these. However, the responses also disputed the factual basis and appropriateness of some of the findings and recommendations.

Having completed this examination, the Committee stands by its report findings and recommendations.

APPENDICES

Appendix One

FINDINGS AND RECOMMENDATIONS ARISING FROM REPORT NO.31

RECOMMENDATIONS

The Public Accounts and Expenditure Review Committee recommends the following:

Recommendation 1 (p.13)

Where a Minister requests a statutory authority to carry out certain actions, such a request should be confirmed in writing by the Minister.

Where a statutory authority believes a Minister has made a request of it the authority has an obligation to seek written confirmation from the Minister.

These principles should be incorporated in all legislation governing statutory authorities.

Recommendation 2 (p.30)

Where the level of confidentiality imposed by a project proponent restricts the ability of government to adequately assess a proposal, funding should be refused.

Recommendation 3 (p.37)

Where a Treasurer is also the responsible Minister, applications for supplementary funding for that portfolio should be submitted to Cabinet for approval.

Recommendation 4 (p.49)

Where an Agency believes that its required and preferred course of action is contrary to the wishes of the Minister, then it should advise the Minister accordingly.

The Minister should provide a written Ministerial direction to the Agency if the Minister requires an Agency to follow a different course of action that it favours.

Recommendation 5 (p.59)

That the Minister for Fair Trading report to Parliament on the means by which procedures for verifying membership of associations applying for incorporation can be strengthened.

FINDINGS

Chapter Two

Finding 1 (p.9)

The acceptance by government of the confidentiality restrictions put in place by Mr Reynolds meant that no meaningful assessment of the proposal was possible.

Mr Reynolds' insistence that the matter remain strictly confidential severely hampered the relevant government bodies from the process of assessing the proposal.

Finding 2 (p.11)

The meaning of the word “host” used in the letter from the Premier to Mr Reynolds, dated 12 April 1994, was ambiguous and confused the role proposed for Government in the staging of the *World Dance Congress*.

Finding 3 (p.12)

The proposal for the *World Dance Congress* was referred to the Western Australian Tourism Commission by the Premier.

This was not a Ministerial direction within the meaning of the *Western Australian Tourism Commission Act 1983*.

However, Mr Harrison's recollection of a verbal request from the Premier and the letter from the Premier to Mr Reynolds dated 12 April 1994, appears to have signalled to the Western Australian Tourism Commission (WATC) that the Premier wanted the project to be supported. As a consequence of this, the WATC dealt with the matter as though it was a Ministerial direction.

The Western Australian Tourism Commission should not have taken these actions unless it was prepared to report them as a Ministerial direction in its annual report.

The request by the Premier for Mr Harrison to assess the proposal should have been provided directly to him in writing.

While existing legislation deals with Ministerial directions, there is a problem regarding Ministerial requests that cannot be classified as directions.

Chapter Three

Finding 4 (p.21)

Important information given to the Office of the Premier by Mr Reynolds and others was not passed onto Eventscorp.

Finding 5 (p.21)

Eventscorp lacked the detailed information that would have enabled it to adequately assess the economic impact and tourism demand of the event.

Finding 6 (p.22)

Eventscorp made insufficient checks on the ability of Mr Reynolds to attract corporate sponsorship.

Finding 7 (p.22)

Eventscorp's own criterion regarding the ratio of government and private funding was not addressed.

Finding 8 (p.26)

Mr Reynolds did not have experience in promoting and staging international dance events.

Finding 9 (p.26)

Eventscorp did not adequately scrutinise the personal and financial credentials of the personnel and organisations associated with the proposal.

Finding 10 (p.26)

The Global Dance Foundation was established by Mr Reynolds for the sole purpose of gaining government sponsorship funds.

Finding 11 (p.26)

The Global Dance Foundation did not seek incorporation until government financial support was evident. Because of this, the Government and its authorities were not dealing with an entity with any legal status.

Finding 12 (p.29)

The imposed confidentiality restrictions removed from Eventscorp any ability it may have had to independently verify Mr Reynolds' claims regarding his databases and financial projections. Consequently, the modified impact analysis carried out by Eventscorp was both unreliable and inaccurate.

Finding 13 (p.30)

The level of confidentiality required by Mr Reynolds was unjustifiable.

Chapter Four

Finding 14 (p.34)

The review clause favoured by the Western Australian Tourism Commission and Eventscorp was one of the few risk management mechanisms being pursued.

The review clause would not have afforded protection to the first moiety of funds committed, but would have enabled a performance based assessment before the second payment was made.

Finding 15 (p.35)

Threats by the proponent to take the event elsewhere should have been ignored.

Finding 16 (p.37)

While it is clear that the Treasurer is empowered under the *Financial Administration and Audit Act 1985* to authorise supplementary funding for his own portfolios, a conflict of interest exists in this power.

Chapter Five

Finding 17 (p.43)

Mr Crockett's action to commence contract drafting with the Crown Solicitor's Office immediately following the 22 December meeting was inconsistent with his stated recommendation that a review clause should be tied to payments to the Global Dance Foundation.

Finding 18 (p.45)

On the basis of the decisions taken at the meeting chaired by the Premier on the 22 December 1994, the Western Australian Tourism Commission made a decision to support the sponsorship funding of the Global Dance Foundation.

The formal decision by the Western Australian Tourism Commission was not made until May 1995.

However, Eventscorp proceeded as if a formal determination by the Western Australian Tourism Commission had been made on the 22 December.

At no stage in the intervening five months did the Western Australian Tourism Commission adequately review the decisions of the 22 December meeting.

Finding 19 (p.47)

There is little evidence to support the Premier's assertion that the event had general support within government.

Finding 20 (p.47)

The Premier's Office sought the concerns of the relevant agencies regarding the *World Dance Congress*.

Finding 21 (p.47)

The Premier should have been aware of the concerns or conditions placed on support for the *World Dance Congress* by the relevant agencies.

Finding 22 (p.48)

Poor record keeping and inadequate documentation of decisions made at the 22 December meeting and previous meetings diminished accountability for those decisions.

Finding 23 (p.48)

The absence of adequate documentation meant that there was no clear critical path for the progress of the proposal.

Finding 24 (p.48)

The absence of adequate documentation and the poor record keeping led to disputes regarding the nature and the extent of the commitment of the Government to the proposal and the obligations of the proponent.

Chapter Six

Finding 25 (p.53)

A review clause was included in the initial draft Agreement, because the Crown Solicitor's Office believed it was an important safeguard.

This clause was replaced with a clawback clause on the instruction of Eventscorp in March/April 1995.

Finding 26 (p.53)

Delays in finalising the Agreement meant that the payments were made in quick succession, further restricting the ability of the agencies to analyse the feasibility of the event on an ongoing basis as the planning developed.

Finding 27 (p.54)

Ambiguity and omissions in the final agreed contract diminished the ability of the Western Australian Tourism Commission to access information from the Global Dance Foundation.

Finding 28 (p.54)

The contract did not specify clearly the respective obligations of the parties with regard to the performance of their obligations.

Finding 29 (p.55)

It is clear that Mrs Harrison did not understand her role as a Western Australian Tourism Commission representative on the board of the Global Dance Foundation.

This rendered the clause relating to the appointment of a Western Australian Tourism Commission (WATC) Commissioner to the Committee managing the Global Dance Foundation's affairs ineffective in protecting the WATC's interests.

Finding 30 (p.56)

It was a condition in the draft Cabinet submission that consultation take place with the dance community.

No such consultation took place.

The level of confidentiality required by Mr Reynolds restricted the ability of Eventscorp and the Western Australian Tourism Commission from consulting with the dance community.

Had the dance community been properly consulted they would have given a valuable perspective on the proposal.

Finding 31 (p.57)

The Crown Solicitor's Office advised the Western Australian Tourism Commission of the requirement for the Global Dance Foundation to be incorporated.

However, if the proper checks had been made at the time, the course of events would not have been significantly altered.

Finding 32 (p.58)

Mr Peter Reynolds and his solicitor, Mr Peter Kyle, were negligent in not confirming the proper legal status of the Global Dance Foundation at the time of execution of the contract.

Finding 33 (p.58)

Contrary to Section 5(2)(b) of the *Associations Incorporation Act 1987*, and contrary to the certificate signed by Mr Reynolds under Section 5(2)(b), the Global Dance Foundation did not have more than five members at the time of the application for incorporation.

Mrs Harrison was not appointed until July 1995.

Finding 34 (p.60)

The credentials of the Global Dance Foundation and Mr Reynolds' companies were not scrutinised sufficiently. Had this occurred, Gilbert International and Mr Reynolds would have been made more accountable for management performance and reporting of the expenditure of funds.

Finding 35 (p.61)

Mr Reynolds breached his contract with the Western Australian Tourism Commission by not having the “keyman insurance” stipulated in the contract.

Finding 36 (p.61)

The Western Australian Tourism Commission should not have released funds to Mr Reynolds until he complied fully with the conditions of his contract with respect to “keyman insurance”.

Appendix Two

Appendix Three

Appendix Four

Appendix Five

Appendix Six

Appendix Seven