

13 November 1995

His Excellency Major General Michael Jeffrey AO MC  
Governor of the State of Western Australia  
Government House  
St George's Terrace  
PERTH WA 6000

Your Excellency

In accordance with the Commission issued to me on 9 May 1995 and subsequently varied, I have the honour to present to you the report of my inquiry into the Terms of Reference set out therein.

Yours faithfully

Ken H Marks  
Commissioner

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## **NAMES AND POSITIONS HELD BY PERSONS MENTIONED IN THIS REPORT**

The following is a list of persons mentioned in this report and their positions at the relevant time to assist ready reference :

<u>Name</u>	<u>Relevant Position in late October and November 1992</u>
ADAMS Patricia	Volunteer worker in the Electoral Office of John Halden and acting Electorate Officer for the week 19 to 23 October 1992
ANDERSON Marcelle	Chief Executive, Department of the Cabinet
AYTON Leslie	Assistant Police Commissioner (Crime Operations)
BEGGS Pamela	Minister for Transport, Racing and Gaming, and Tourism; Member for Whitford
BERINSON QC Joseph	Attorney General, Minister for Corrective Services; Member for North Metropolitan Region
BLACKBURN Estelle	Former Press Secretary to the Premier
BRIDGE Ernest	Minister for Agriculture, Water Resources and the North-West; Member for Kimberley
BULL Brian	Commissioner of Police
CALLANDER Diana	Journalist with The West Australian

CAMPBELL Barbara	Mother of Penny Easton
CHARLTON Eric	Member for Agricultural Region
CONSTABLE Elizabeth	Member for Floreat
COURT Richard	Opposition Leader and Member for Nedlands
COWAN Hendy	Leader of the National Party and Member for Merredin
DURACK Douglas	Media Secretary to the Premier
EASTON Brian Mahon	Former Managing Director of Exim Corporation
EASTON Penny	Lawyer, former wife of Brian Mahon Easton
EDWARDS Graham	Minister for Police, Emergency Services, Sport and Recreation; Member for North Metropolitan Region
FAN McLAURIN Alison	Senior Reporter for Channel 7
GALLOP Geoffrey	Minister for Fuel and Energy, Micro-economic Reform, Parliamentary and Electoral Reform, Minister Assisting the Treasurer; Member for Victoria Park
HALDEN John	Member for South Metropolitan Region
HALLAHAN Kay	Minister for Education, Training and the Arts;

Member for East Metropolitan

HENDERSON Yvonne	Minister for Productivity and Labour Relations, and Consumer Affairs; Member for Thornlie
HERSEY Robert	Detective Senior Sergeant of Police
HILDITCH Mark	Clerk to the Pike Committee
HILL Gordon	Minister for Small Business, Mines, Fisheries, Trade and Investment, Minister Assisting the Minister for Employment; Member for Helena
HUMPHRIES, David	Journalist with The Melbourne Age and The Sydney Morning Herald
HUMPHRY Christopher	Solicitor for Carmen Lawrence
IMMS Stephen	Principal Private Secretary to Pamela Beggs
IRVING Mark	Journalist with The Australian
KOBELKE John	Cabinet Secretary, Member for Nollamara
KOVACS Zoltan	Media Secretary to the Premier
LAWRENCE Carmen	Premier of Western Australia; Member for Glendalough

LOVE Ross	Executive Director, Office of the Premier
LOXLEY Steven	Chief of Staff of The West Australian
MARQUET Laurence	Clerk of the Legislative Council
MATHESON Bradley	Senior Policy Adviser to Geoffrey Gallop
McAULEY Margaret	Lawyer, sister of Penny Easton
McAULIFFE Mark	Solicitor for Brian Mahon Easton
McGEOUGH Paul	Journalist with The West Australian
McGINTY James	Minister for the Environment, Housing, Construction and Heritage; Member for Fremantle
McKECHNIE QC John	Director of Public Prosecutions
MEERTENS Grace	Journalist with The West Australian
MURRAY Paul	Editor of The West Australian
ORR David	Executive Officer of the Official Corruption Commission
PARRY Geof	Political Reporter for Channel 7
PEARCE Robert	Member for Armadale

PIKE Robert	Chairman of the Standing Committee on Constitutional Affairs and Statutes Revision; Member for North Metropolitan Region
QUEKETT Malcolm	Journalist with The West Australian
RAY Darren	Electorate Officer to Jacqueline Watkins, formerly to John Halden
RIPPER Eric	Minister for the Family, Community Development, Youth Justice, Disability Services; Member for Belmont
ROLINSON Barrie	Detective Superintendent of Police
RUSSELL Edward	Director of Parliamentary Services, Office of the Premier
SAXON Martin	Journalist with The Sunday Times
SMITH David	Minister for Lands, Planning, Justice, Local Government and the South-West; Member for Mitchell
SULLIVAN Francis	Senior Policy Officer for Keith Wilson
TAYLOR Ian	Deputy Premier, Minister for State Development, Goldfields and the Mid-West, Member for Kalgoorlie
WATKINS Jacqueline	Member for Wanneroo

WATSON Judyth	Minister for Aboriginal Affairs, Multicultural and Ethnic Affairs, Seniors and Women's Interests; Member for Kenwick
WHALLEY Joanne	Electorate Officer to John Halden
WICKHAM QC John	Chairman of the Official Corruption Commission
WILLOUGHBY Robert	Senior Media Secretary to the Premier
WILSON Keith	Minister for Health; Member for Dianella
WITHERS Edward John	Director of Goldrock Investments Pty Ltd (1985/1986)

## **Chapter I**

### **1 INTRODUCTION**

#### **1.1 Terms of Reference**

1.1.1 On 9 May 1995, the Honourable David Malcolm, Lieutenant Governor and Deputy Governor of the State of Western Australia issued the following Commission with the advice and consent of the Executive Council :

By this commission under the Public Seal of the State issued with the advice and consent of the Executive Council, I, the Lieutenant-Governor and deputy of the Governor -

(1) Appoint you to be a Royal Commission to inquire and report on whether the circumstances and events preceding and following the presentation of a petition to the Legislative Council of the Parliament of Western Australia on 5 November 1992 by the Honourable John Halden MLC on behalf of Brian Mahon Easton involved conduct that was an improper or inappropriate use of executive power or public office or was motivated by improper or inappropriate considerations, and for that purpose to:

(a) Identify all persons who were at the relevant time -

- Ministers of the Crown;
- members of Parliament;
- staff of such Ministers or members acting on or purporting to act on behalf of or on the instructions of such Ministers or members; or
- holders of public office,

and who -

(i) were directly or indirectly involved in those circumstances or events, whether in connection

with the preparation of the petition or its presentation or the timing of its presentation or in any other manner; or

- (ii) knew of or considered the petition or any of its contents or proposed contents prior to its presentation to the Legislative Council;
  - (b) Determine the nature and extent of such involvement, knowledge or consideration and the circumstances in which such knowledge was obtained or such consideration took place;
  - (c) Determine the motivation for the conduct of those persons in the course of such involvement; and
  - (d) Determine whether and if so when and to what extent such persons communicated information in respect of the petition or of its contents or proposed contents to members of the news media;
- (2) Declare that, should you be unable to obtain information relevant to your inquiry because of the operation of Article 9 of the Bill of Rights 1689 (UK), you are required to present an interim report outlining the nature of the information sought to be obtained, the circumstances in which you have been unable to obtain that information, and the reason why obtaining that information would or might assist you in completing your inquiry and report;
- (3) Declare that you are to report within 5 months of the issue of this commission and that you may publish interim reports; and
- (4) Declare that, by virtue of this commission, you may in the execution of this commission do all the acts, matters and things and exercise all the powers that a Royal Commission may lawfully do and exercise, whether under the Royal Commissions Act 1968 or otherwise.

## 1.2 Problems posed by the Terms of Reference

(2)

1.2.1        The first paragraph of cl. (1) is a source of difficulty. Words must be added after “or” where appearing the second last time to enable operative meaning of the paragraph. The alternatives are:

- (a) ..... whether the circumstances .... involved conduct that was an improper or inappropriate use of executive power or public office or *involved conduct that* was motivated by improper or inappropriate considerations .....
- or
- (b) ..... whether the circumstances .... involved conduct that was an improper or inappropriate use of executive power or public office or *involved use of executive power or public office that* was motivated by improper or inappropriate considerations .....

1.2.2        Both interpretations have their difficulties but I have concluded that (b) is preferable to (a) notwithstanding that (a) is grammatically more appealing.

1.2.3        Alternative (a) could not have been intended. If adopted, it would involve an open-ended inquiry into the motives of all manner of persons who are unidentified, in other words, it does not say whose conduct is inquired after. It could not have been intended, for example, that I inquire into the motives of the person who photocopied or assisted Easton to photocopy documents or of a person who might have used a word processor to assist in the drafting of the petition or a person who allowed Easton to use her fax machine or the taxi driver who drove Easton to Parliament House to enable him to present documents to the Clerk of the Legislative Council.

1.2.4        Alternative (b) is preferable because it confines the inquiry to persons who might be found to have used executive power or public office and,

while it requires the implication of more words than does (a), it accords more sensibly with the purpose and intention of the Terms of Reference.

1.2.5            While (b) has the difficulty of requiring the assessment of motive alone, divorced from conduct which, in itself, might not be improper or inappropriate, it is a difficulty which appears common to both interpretations (and, I believe, any other interpretation).

1.2.6            The Terms of Reference posed unique problems apart from those of interpretation.

1.2.7            The Terms of Reference are confined to circumstances and events which precede and follow the presentation of the subject petition. The presentation was and is clearly accepted as protected by Parliamentary privilege so that its presentation or its being presented is not examinable by me. The relevant circumstances and events are necessarily to be identified by reference to the Parliamentary event, but due to this unusual circumstance, the Terms of Reference did not impose a straightforward task. It has been even more difficult to assess the conduct of persons who “were directly or indirectly involved” in those circumstances or events where conduct merged with the actual presentation of the petition or otherwise with conduct protected by privilege. I discuss privilege more extensively in Chapter 2.

1.2.8            Throughout the public hearings the spectre of Parliamentary privilege menaced questions of admissibility of evidence. It remained over my deliberations of permissible conclusions from the established facts. The difficulty has been to examine conduct in slices; for example, in use of executive power, in use of public office, in “political activity” outside Parliament and conduct which must be excluded from consideration as “Parliamentary”.

1.2.9 I use here “political activity” to refer to activity outside Parliament directed to the electorate or to gaining the attention of the electorate. I do not claim it to be an all embracing definition.

1.2.10 It is difficult, certainly unsatisfactory, to assess conduct in discrete compartments when, in reality, the compartments were parts of and merged with the whole. Conduct is best understood and assessed in its entirety.

1.2.11 The problems to which I have adverted could only be met after the facts became established. I interpret the Terms of Reference to require me in essence to undertake the following tasks :

- (1) To determine the circumstances and events, that is, what happened, before and after the presentation of the petition.
- (2) To determine only those circumstances and events which bear on the petition having come to be presented and on it having been presented.
- (3) To determine whether there was any (and presumably what) improper or inappropriate use of executive power or of public office involved in those circumstances and in the happening of the events.
- (4) To determine in the alternative whether any use of executive power or of public office which was involved in those circumstances and the happening of the events was motivated by improper or inappropriate considerations.
- (5) To provide (for the purpose of the inquiry and report) the information required under paragraphs 1(a)(i) and (ii).
- (6) To make the determinations required by 1(b), (c) and (d).

### **1.3      The Suicide of Penny Easton**

1.3.1        Penny Easton was a subject of the “false evidence on oath” allegation in the petition and of the perjury allegation made by her former husband, Brian Easton, to the Official Corruption Commission, to R G Pike MLC, to the Public Service Commissioner Dr Wood, to John Halden MLC and to Marquet, the Clerk of the Legislative Council.

1.3.2        On the morning after the petition was tabled she stood with her back to camera in the garage of her home in silent response to persistent questions by television reporter Geof Parry.

1.3.3        She committed suicide on 9 November, some four days after the petition was presented. She left a note.

1.3.4        I ruled that I would not “investigate” the suicide and I have not done so.

1.3.5        Although the Terms of Reference encompass events “following the presentation” of the petition and the suicide was such an event, it was not one which could sensibly be said, in my opinion, to have involved conduct or “motivation” which they define. I have interpreted the Terms of Reference to exclude the death of Penny Easton from investigation.

1.3.6        In any event, the place which it might be thought that the suicide had in the “circumstances and events” following the petition does not necessarily need to be the subject of a conclusion by me. In Adelaide Stevedoring Company

Ltd. v. Forst (1940) 64 CLR 538 the High Court accepted that common experience might supply adequate ground for believing that events are naturally associated by reason of their sequence.

#### **1.4 Royal Commissions Act 1968**

1.4.1 Although the Royal Commissions Act 1968 was amended in important respects on the recommendation of the Commissioners who reported in October 1992 after their inquiry into commercial activities of Government, there are some further matters which merit attention.

1.4.2 Section 12(1) is expressed to require a person who makes an affirmation to affirm that he or she “conscientiously objects” to taking an oath. Analogous provisions in modern statutes permit witnesses to make an unqualified choice between taking an oath and making an affirmation. It caused some embarrassment when witnesses were told that they must say that they objected to taking an oath. Some said that they did not object but preferred to make an affirmation. Sometimes, it is not conscientious objection to taking an oath but religious beliefs which may lead a witness not to take an oath, for example, on the New Testament. The Koran or Old Testament may not be available. Embarrassment would be avoided if an unqualified choice existed. An example of a provision for such choice is s. 6(6) of the Official Corruption Act 1988.

1.4.3 The contempt power under the Royal Commissions Act 1968 appears to be limited to referral to the Supreme Court for consideration of punishment for failure to answer a summons and/or failure to answer questions “put by the Commissioner”.

1.4.4       Section 7(1) is expressed in wide terms but it is unlikely that it confers power to refer a person for punishment for other contempt. Such a power, it may be argued, requires clear expression.

1.4.5       Section 31 gives to a Commissioner the same immunity and protection as a Judge. The word “protection” in s. 31(1) would not appear to include a power to refer a person for contempt. The difficulty of implying from any provision of the Royal Commissions Act a power to refer a case of contempt to the Supreme Court or to punish for contempt is that a Royal Commissioner does not administer justice. Contempt of court is interference with “the administration of justice”. It would be necessary to define a contempt power appropriate to the functions of a Royal Commission. I refer to the contents of para. 1.5.

1.4.6       Consideration might also be given to s. 14(1) and (2) which are presently confined to a question put to a witness “by the Commissioner”. It would be helpful if the subsections included “or any such question put to him or her by or on behalf of an interested person which the Commissioner directs the witness to answer”.

## **1.5       The Conduct of the Royal Commission**

1.5.1       On the morning of 8 September 1995 Senior Counsel for Dr Lawrence applied to the Commissioner that he disqualify himself. The grounds were without substance but put forward, as is a common experience for Royal Commissioners, as part of a perceived protection against the risk of adverse finding. Moreover, its timing coincided with activity outside the Commission in response to widely publicised evidence capable of doing damage to particular interests.

1.5.2 Attacks on the Commission and its Assisting Counsel by public figures having particular interests threatened to undermine public confidence in the Commission's work.

1.5.3 There are lessons to be learnt. A Commission set up under the Royal Commissions Act 1968 has no power to curtail conduct which, if occurring in respect of a court proceeding, would amount to contempt. Nor does it have a like power in respect of intimidating verbal assaults on the Commissioner. On the other hand, a Commission is bound by the rules of natural justice (see Mahon v. Air New Zealand Limited [1984] AC 808 which was approved by the High Court in Annetts v. McCann (1990) 170 CLR 596; (1990) 97 ALR 177). These rules, it would seem, require that evidence taken by the Commission is, except for good reason, in public, that legal representation of interests is allowed and that otherwise procedural fairness is accorded.

1.5.4 In the result, the conduct of a Royal Commission has become more akin to the conduct of a court proceeding than it was in former times.

1.5.5 It is accepted as fundamental to the administration of justice that impartiality of the decision maker and confidence in that person by parties and by the public depend on his or her freedom (and also that of witnesses) from intimidation or pressure, such as daily outside commentaries on evidence and/or on rulings as they emerge. The same must now be said about the conduct of Royal Commissions despite the fundamental difference between the two processes being on the one hand a determination of a dispute according to one set of rules and on the other, an investigation of the truth of facts according to a different set of rules.

1.5.6        The investigatory process aims at discovery of the truth and is a valuable tool of democratic government for peace and good order. The latter are targets for disturbance in all human societies. The investigatory process necessarily involves the pursuit and examination of evidence by the investigator. In the administration of justice, the judge does not perform this function. An investigator does. He or she must check whether any evidence pointing to an adverse conclusion against a person is supported by other evidence. Thus a detective who matches a fingerprint with a suspect might seek further evidence to support the link between the suspect and the crime. The pursuit of that evidence is open to the interpretation that the investigator is merely seeking to "prove" the crime against the suspect and is therefore committed to a course "against" that person. Others would say that the investigator is merely determining the strength of the suspicion. The analogy is not altogether lost in relation to an investigation of the present kind. The former interpretation is commonly canvassed when evidence emerges publicly and is adverse to an interested person.

1.5.7        The protection given by contempt law to a court proceeding is to assist the judge to make a decision without pressure from outside and by reference only to the issues which emerge from the evidence and the contentions of the parties. The assumption is that without that protection the parties cannot be expected to have confidence in the decision having been unaffected by the pressure.

1.5.8        If the law now requires that a Royal Commission is to be conducted along the lines of a court proceeding, as it now seems that it does, then it requires similar protection. If it is not given, public confidence in the outcome may be damaged for the same reasons. It is not that the result is less reliable but that its acceptability is clouded by the attacks on its authenticity by self-interested commentary and denigration.

1.5.9 These observations are the more pertinent by reason of the Terms of Reference here. The inquiry necessarily threatened damage to persons associated with one only of the political parties and thus possible damage to the party itself. When evidence emerged which had the potential to damage that party a predictable attempt was made to meet it, not merely by the normal methods of challenge such as cross examination and evidence, but by attempts to discredit and intimidate the Commission itself. Accordingly, the need for protection, which would require amending legislation, or legislation for differently empowered inquiries, is so much the greater.

1.5.10 The investigatory process should not be abandoned nor fail to be used only because a disadvantage might flow to a political party and an advantage to another. The preservation of our system of government depends on preservation of public power to learn the truth of events in which there is a community interest. The power needs to be strengthened not weakened.

## **1.6 Appearances**

1.6.1 Leave was given to a number of legal practitioners for interested persons. Details of appearances are in Annexure 1.

## **1.7 Final Submissions and Number of Witnesses**

1.7.1 Counsel Assisting gave her final address on 5 October 1995. All submissions concluded on 10 October 1995.

1.7.2 In total, 75 (seventy five) witnesses were called before the Commission, and an additional 6 (six) witness statements were received in evidence. The list of witnesses is Annexure 2.

## **1.8 Standard of Proof**

1.8.1 The Terms of Reference are silent as to the standard of proof to be applied before the Commission makes findings.

1.8.2 I have taken the view expressed by the Commissioners in their Report on Commercial Activities of Government and Other Matters (1992) Vol. 1 Part I, Ch. 1-19, that the appropriate standard is as in a civil proceeding to be applied in accordance with the gravity of the allegation being considered.

1.8.3 In Briginshaw v. Briginshaw (1938) 60 CLR 336 at p. 362, Dixon J (as he then was) said:

“The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proof, indefinite testimony, or indirect influences”.

1.8.4           The High Court approved this statement in Helton v. Allen (1940) 63 CLR 691 at 712 and in Reifek v. McElroy (1965) 112 CLR 517 at pp. 521-2.

## **1.9       Private Hearings**

1.9.1           The Commission did not conduct any private hearings.

## **1.10      Hearsay Evidence**

1.10.1          This Commission was a Commission of Inquiry required to conduct an investigation into the matters referred to it. It was pointed out in Mahon's case that the rules of evidence to be applied in the courts do not apply to a Royal Commission. I refer, without repeating, to paras. 1.6.20 and 1.6.21 of the abovementioned report of the Royal Commission (1992) and adopt the observations there made in relation to hearsay evidence. Although hearsay evidence was given whatever weight appeared appropriate, my findings do not depend on any element of hearsay. They result from acceptance of direct evidence of facts and inferences drawn from them.

## **1.11      Legal Proceedings and Delay**

1.11.1          The Commission held its first public hearing on 20 June 1995 for the purposes only of entertaining applications by lawyers for leave to represent interests during the inquiry and of its announcing a date for commencement of public hearings. Commencement of public hearings was fixed for 17 July.

1.11.2 On 29 June 1995 the Honourable Carmen Mary Lawrence MHR and the Honourable Stanley John Halden MLC (the plaintiffs) instituted a proceeding by way of writ of summons out of the Supreme Court of Western Australia seeking (among other things) a declaration that the Commission is invalid and void and for a consequent injunction restraining any inquiry and report as required by the terms of reference.

1.11.3 On the same date, the plaintiffs sought by notice of motion an injunction in similar terms until the trial of the proceeding.

1.11.4 The motion was heard by the Hon Mr Justice Steytler on 4 and 5 July 1995 and was dismissed on 10 July 1995.

1.11.5 On 13 July 1995 the plaintiffs filed a notice of appeal to the Full Court of the Supreme Court of Western Australia against the dismissal by Steytler J. The appeal was heard on 27 and 28 July 1995 and dismissed on 2 August 1995.

1.11.6 In the meantime, on 18 July 1995 the Hon Mr Justice Heenan granted an application on behalf of the plaintiffs to restrain the Commission from public or private hearings until the determination of the appeal to the Full Court.

1.11.7 After the dismissal by the Full Court the plaintiffs made application dated 3 August 1995 for special leave to appeal to the High Court. At the same time they applied by summons to a single Justice of the High Court in Perth for an order restraining the Commission from further operation until the determination of the application for leave to appeal. This summons came on for hearing before the Hon Justice Toohey but in the course of its hearing an understanding was reached about the conduct of the work of the Commission in the period for which injunction

was sought. In the result, the Commission only took evidence of media interviews and broadcasts.

1.11.8 The application for special leave to appeal to the High Court was heard and dismissed on 14 August 1995.

1.11.9 The Commission resumed its public hearings without restriction on 15 August 1995.

1.11.10 Although the Commission was appointed 9 May 1995 its hearings on substantive matters consumed no more than one and a half days before 15 August. Investigative and research work were performed during the period but were hampered by the refusal of persons to provide statements until the fate of the Commission, as determined by the courts, was known.

## **1.12 Easton High Court Proceeding**

1.12.1 On 3 July 1995 Brian Mahon Easton caused a writ to be issued out of the High Court seeking various forms of relief and naming some six defendants - Clive Edward Griffiths, President of the Western Australian Legislative Council, Carmen Mary Lawrence, the former Premier of Western Australia, John Halden, Peter Gilbert De Conceicao Foss, Richard Court, the Premier of Western Australia and the Commissioner.

1.12.2 In essence Brian Mahon Easton sought a declaration that the Commission was valid, that the inquiry may be lawfully expanded to include certain matters, that certain resolutions of the Legislative Council concerning the plaintiff be declared invalid and that the Western Australian Cabinet be ordered to approve

payment of legal costs of Brian Mahon Easton in the interests of procedural fairness to enable his legal representation before the Commission.

1.12.3 On 20 July 1995 Toohey J dismissed an application by Easton to restrain the Commissioner until judgment in the action or further order from inquiring or reporting in accordance with the Terms of Reference other than providing an interim report as provided in paragraph (2) of the instrument of appointment.

### **1.13 Meaning of “Improper” for the purposes of the Terms of Reference**

1.13.1 The word “improper” appears in but is not defined by the Terms of Reference. It is capable of meaning different things to different persons and is clearly incapable of a definition applicable universally in all circumstances.

1.13.2 The Terms of Reference pose the question whether in the defined circumstances there was “improper or inappropriate use of executive power or public office”.

1.13.3 Answers depend on particular circumstances in which the power was exercised or in which the public office was used, what exercise of power occurred or what use was made of the office in those circumstances; and a judgment of that exercise or use in the light of what might reasonably be expected of the holder of such power or of such public office by reasonable persons with knowledge of the duties, powers and authority of those positions.

1.13.4 This understanding is greatly assisted by the recent majority judgment of the High Court in R v. Byrnes; R v. Hopgood (1995) 130 ALR 529.

1.13.5 Section 229(4) of the Companies (SA) Code provided that an officer or employee of a corporation shall not make “improper use” of his position to do the things there defined. The High Court had considered the directions of the trial Judge about the meaning of “improper use” in the sister provision s. 229(4) of the Companies (Western Australia) Code in Chew v. The Queen (1991-2) 173 CLR 626.

1.13.6 In Byrnes the majority (at p. 538) cited with approval what Toohey J said in Chew at p. 647 and added:

“It was unnecessary for the other judgments to expound the meaning of ‘improper use’ but that case has rightly been taken to approve an objective test of impropriety. Impropriety does not depend on an alleged offender’s consciousness of impropriety. Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the alleged offender by reasonable persons with knowledge of the duties, powers and authority of the position and the circumstances of the case.”

1.13.7 The majority also approved the statement of Jacobs J in Grove v. Flavel (1986) 43 SASR 410 at p. 420:

“The word ‘improper’ is not a term of art. It is to be understood in its commercial context to refer to conduct which is inconsistent with the ‘proper’ discharge of the duties, obligations and responsibilities of the officer concerned.”

1.13.8 Here the word “improper” does not, strictly speaking, appear in a “commercial context” but it does not require, in my opinion, a different understanding in the context of the discharge of duties, obligations and responsibilities of a public nature.

1.13.9 Although the observations in Byrnes concern the ingredients of a statutory offence and “improper” interpreted in the particular verbal setting, the expression “improper” in the Terms of Reference is in a sufficiently analogous

setting to permit the above adaption of those observations. In my opinion they are apt.

**1.13.10 Principles distilled are:**

- (1) The test of “impropriety” is objective, that is, it does not depend on consciousness of impropriety on the part of the person under consideration.
- (2) Impropriety in a particular case is to be determined by reference to the particular circumstances in which it is said to have occurred.
- (3) The issue is whether the conduct impugned is inconsistent with the proper discharge of the duties of the office in question.  
(Byrnes at p. 538; Whitehouse v. Carlton Hotel Pty Ltd (1987) 162 CLR 285; 70 ALR 251).
- (4) Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the person under consideration by reasonable persons with knowledge of the duties powers and authority of the position in the particular circumstances.

**1.14 Meaning of “inappropriate”**

**1.14.1** “Improper” and “inappropriate” do not necessarily have the same meaning. In the present context, however, I have not had reason to give importance to the distinction. My observations in relation to the word “improper” apply to the word “inappropriate” as used in the Terms of Reference.

**1.15 Meaning of “Public Office”**

1.15.1           The Terms of Reference do not define “holders of public office”.

The expression is one which is capable of giving trouble.

1.15.2           There is a definition of “public officer” in the Criminal Code which includes (among other things) “a person holding office under, or employed by, the State of Western Australia, whether for remuneration or not”. The definition of the expression in the Official Corruption Commission Act 1988 (“the OCC Act”) incorporates the definition of the Criminal Code.

1.15.3           In R v Whittaker (1914) 3 KB 1283, Lawrence J said :

“A public officer is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.”

1.15.4           A member of Parliament is a holder of public office as also is a head of Government such as a State Premier. The matter at common law is put beyond doubt by what was said by members of the High Court in Horne v. Barber (1920) 27 CLR 495 and The King v. Boston (1923) 33 CLR 386. These cases are discussed in Chapter 7.

## **1.16   Staff**

1.16.1           The Commissioner and Assisting Counsel, Ms Ann Vanstone QC and Ms Narelle Johnson, were assisted by a staff of 18 (eighteen) persons listed in Annexure 3.

## **1.17   Information Technology**

1.17.1 The Commission was supported by Information Technology described in Annexure 4.

### **1.18 Recording and Transcription Services**

1.18.1 These are detailed in Annexure 5.

### **1.19 Records Management**

1.19.1 See Annexure 6.

### **1.20 Media**

1.20.1 Details of media involvement are provided in Annexure 7.

### **1.21 Tributes**

1.21.1 The Commission is greatly indebted to the highly skilled assistance provided by all those persons who comprised the team. At times each worked not only under the pressure of work but also under the stress of the attention, often ill-informed and hostile, given to the Commission by those in public life who did not welcome its work. Even although not under direct attack, persons working with the Commission could not but be adversely affected by the style and content of what was said and done outside. The Commission proceeded to carry out its tasks with the unwavering support of all within the team.

1.21.2 Early in May 1995 Mr Michael Johnson was appointed as the Commission's Executive Officer. His superb administrative skills enabled the smooth and efficient operation of the Commission and adherence to its time frames. He was responsible for the selection of the staff listed in Annexure 3.

1.21.3 The Commission wishes to pay tribute to the dedication and skill of every person in the team.

## **Chapter 2**

### **2. PRIVILEGE OF PARLIAMENT AND THE TERMS OF REFERENCE**

#### **2.1 Ruling by President of Legislative Council**

2.1.1 The Terms of Reference appear to recognise that by reason of Parliamentary privilege I cannot inquire about some matters that otherwise might be relevant.

2.1.2 The Terms of Reference refer to me only the circumstances and events which skirt the presentation of the petition to the Legislative Council.

2.1.3 The permitted and prohibited areas of inquiry may well be difficult to define with precision. Counsel for interested parties submitted to me on 17 July 1995 and to the courts before and after that time that the entire area of the inquiry was prohibited. It was only the contention in that form, however, which did not fall on fertile ground and was rejected.

2.1.4 The courts were not required to, and did not, define the two areas. It is not clear that they have jurisdiction in circumstances such as the present to do so.

2.1.5 In the past, the courts have only decided the ambit of Parliamentary privilege in relation to litigation before them. Their decisions have been for the purpose of determining that litigation. The courts cannot bind Parliament although from time to time Parliament has sought and acted on the opinion of a court (see, for example, In re Parliamentary Privilege Act 1770 (1958) AC 331) and has been guided by court decision; for example, The Select

Committee of Privilege concerning the Petition of Brian Easton, December 1992, did not question Chaffers v. Goldsmith (1894) 1 QB 190 which decided that a member of Parliament had no legal obligation to present a petition. The decision only meant, however, that a court would not order a member to present one. The petitioner was bound by the decision but Parliament was not.

2.1.6            In the circumstances, the Commission decided that its best course was to be guided by what Parliament itself said in relation to the two areas in the context of its very Terms of Reference.

2.1.7            On Thursday, 16 May 1995, the President of the Legislative Council, the Hon Clive Griffiths, ruled :

“Last Thursday the Leader of the Opposition raised a Point of Order and asked me to consider whether the similarities between a 1984 Royal Commission and the one recently appointed to inquire into circumstances relating to the Easton petition were such that my comments in 1984 ought to extend to that in 1995.

The 1984 Royal Commission was appointed to answer two questions, viz, should there be a law prescribing a means of breaking deadlock between the Houses and, if so, what form should it take.

I took issue, not with the subject matter of that inquiry, but with the fact that it was appointed to delve into a subject, unique to the Parliament, without first seeking, at the very least, some form of endorsement from the Houses.

In the course of registering my protest, I argued that the question of deadlocks was an integral part of parliamentary proceedings and thus outside the proper scope of inquiry by an executive-appointed tribunal. It is this part of my statement, based on his reading of the terms of reference for the Easton inquiry, that seems to have prompted Hon John Halden’s question. For the reasons I am about to give, the only similarity between deadlocks and the Easton petition at this stage is the appointment of a Royal Commission on both matters.

Clause 1 of the Easton commission’s reference direct it to:

'inquire and report on whether the circumstances and events preceding and following the presentation of a [the] petition'

involved certain conduct or knowledge by one or more persons described in paragraph (a).

Although the presentation of a petition is as much a proceeding in Parliament as a conference of managers, the preparation, including circulation, of a petition is not.

That view accords with the traditional interpretation of article 9 of the Bill of Rights incorporated into State law by s 1 of the Parliamentary Privileges Act 1891, and the definition of 'proceedings in Parliament' given in s 16 (2) of the Commonwealth's Parliamentary Privileges Act 1987, the 1988 findings of the Senate's Privileges Committee on the circulation of petitions, and s 351(2) of the State's Criminal Code which prevents a defamation action, based on a petition's contents, but only from the time of its presentation to either House. A member might claim privilege as between the member and other persons on other, unrelated grounds, but that is not an issue arising from the point of order.

A person who circulates a petition to obtain signatures takes the risk that such publication renders that person liable to legal action commenced before its presentation, where the cause of action arises from statements or allegations contained in the petition.

A 'proceeding in Parliament' can only be material or activity that, at the time when they are considered, are already within the knowledge or control of the House as part of the business to be transacted.

Whatever was done by members, ministers and others before the presentation of the Easton petition is not a proceeding in Parliament and is therefore open to non-parliamentary inquiry.

As to events after presentation, Clause 2 of the terms of reference acknowledge the possibility of information not being obtainable because of article 9 immunity. I must assume that the Royal Commission will pay proper regard to activity that was a proceeding in Parliament and avoid intruding into that area. I am not going to speculate about precisely where the cut-off point might lie; that will have to be determined if and when objection is taken on those grounds in the course of the Royal Commission's proceedings. As a guide to how article 9 might be applied

in this State, I can do no more than draw attention to s 16(3) of the Commonwealth 1987 Act and its endorsement by the Privy Council last year in *Prebble v. TVNZ* as a fair and accurate restatement of the immunity afforded by article 9 in the course of judicial or other proceedings.

I can assure this House, as I did in 1984, that any infringement of this House's privileges and immunities will be criticised by me, whatever the source of that infringement. In 1984 and 1995 deadlocks and deadlock-breaking machinery cannot be other than proceedings in Parliament and therefore were, and are, an inappropriate subject for a non-parliamentary inquiry. In the case of the Easton Royal Commission there is no more than a possibility that the ambit of its inquiry may raise questions of parliamentary privilege and immunity. Unless and until that contingency is translated into reality there can be no point of order in the form raised by the Leader of the Opposition."

2.1.8 One of the grounds of disqualification asserted by counsel for Dr Lawrence on 8 September was that I had followed this ruling, which was described not only as wrong but merely the opinion of a member of the political party in government which had appointed me. This contention was made before Laurence Marquet, the Clerk of the Legislative Council, gave evidence that the ruling had been advised and drafted by him and delivered without variation (T/s 2305). He is the same Marquet who advised the Labor member, Halden, and Easton about the availability of the petition process and who, indeed, drafted and certified it.

2.1.9 Then the same counsel who made the disqualification application adduced the following evidence from Dr Lawrence (T/s 2444):

"Q. What is his (Marquet's) reputation so far as his knowledge of parliamentary law and practice is concerned?

Dr Lawrence: I think that he would be deferred to by everyone in the Western Australian Parliament including the President of the Council."

2.1.10 The Standing Orders of the Legislative Council were not specific whether a ruling of the President was binding on the Council. If it were, the Commission could proceed with greater safety in reliance on it.

## **2.2 Status of the Ruling of the President - House of Commons Practice**

2.2.1 I sought the understanding of Mr A J Hastings, Clerk of the Journals, House of Commons, London about the effect of the ruling. There were two reasons. His advice was sought by the Select Committee on Privilege concerning the Petition of Brian Easton (“the Foss Committee”) chaired by the Hon. Peter Foss MLC. Also, the practice which governs the Legislative Council, by virtue of s. 36 of the Constitution Act (Western Australia) 1889 in conjunction with s. 1 of the Parliamentary Privileges Act 1891, is the practice of the House of Commons of Great Britain and Ireland.

2.2.2 The relevant correspondence is set out in Annexure 8.

2.2.3 I concluded that the opinion of Mr A J Hastings supports the view that the ruling of the President is binding on the Legislative Council until it is varied by resolution of its members.

## **2.3 Ruling on request for transcript of evidence before the Select Committee**

2.3.1 On 29 June 1995 Senior Counsel assisting the Commission made a written request to the Legislative Council for access to the transcript of evidence given to the Foss Committee.

2.3.2 On the same date the Legislative Council, on a motion moved by a government member, unanimously passed without notice the following resolution:

"That this House notes the request contained in a letter dated June 29 1995 addressed to the President from Counsel Assisting the Royal Commission into use of Executive Power seeking access to the transcript of evidence taken by the select committee of Privilege regarding the petition of Brian Easton and, in declining that request, observes that :

- (1) the proceedings of the committee were proceedings in Parliament to which the privileges and immunities held, possessed and exercizable by this House whether by reason of article 9 of the Bill of Rights 1689 or otherwise apply;
- (2) it has consistently accepted and applied the opinion of the superior courts in Australia and other Commonwealth countries that those privileges and immunities cannot be set aside by its own resolution;
- (3) the 1899 opinion of the Full Court of the State in Wainscot upheld the right of witnesses in a parliamentary inquiry not to have their evidence before such an inquiry used as a ground for commencing, or supporting, later legal proceedings involving the same matter;
- (4) matters inquired into by the select committee are not open to further inquiry by the Royal Commission. Neither are the select committee's findings capable of being questioned by the Royal Commission;
- (5) consideration of matters by the Royal Commission that were the subject of the select committee's inquiry are destructive of the principles on which parliamentary privilege is based;
- (6) in accordance with the usages of the House, the entirety of the transcript was not brought up with the select committee's report but was cited to the extent that it was relevant to the findings and recommendations of the committee;
- (7) the public interest is not served by the disclosure to an instrument of the executive government of material that has not been published by order of this House and to which access is denied to other persons."

## **2.4      Effect of the Ruling**

2.4.1            Paragraphs (4) and (5) have given me some concern. The word "matters" was not defined. I have concluded that it is necessary to distinguish between "matters" and evidence in relation to those "matters". Moreover, identification of the "matters" could best be made by reference to the terms under which the Foss Committee was established by the Legislative Council, as it was on 10 November 1992, namely :

"1.       A Committee of Privilege of five members, any three of whom constitute a quorum, be established to inquire whether there had been any breach of the privilege of the House in the preparation, presentation, use and promotion of the petition presented to this House by the Honourable John Halden on behalf of Brian Easton on Thursday, November 5 1992."

Paragraphs 2 and 3 of the "terms" are not relevant.

2.4.2            I have concluded from the above that the "matters" inquired into were the existence or otherwise of breaches of privilege, an inquiry which I am not entitled to make and have not made.

2.4.3            This is not to say that evidence, to which I have not had access, taken by the Foss Committee may not be the same or similar to evidence given to the Commission which is directed to and relevant to different matters. No evidence before the Commission has been permitted to be directed to any matter of privilege.

2.4.4            The Commission took every care not to trespass on the jurisdiction of Parliament.

## **2.5      Permission to call Marquet, Clerk of the Legislative      Council**

2.5.1            On 8 August 1995, Senior Counsel assisting the Commission sought permission of the Legislative Council for Marquet to give evidence to the Commission. The letter was addressed to the President in the following terms:

“I would be pleased if you would advise whether you are prepared to give permission to your Clerk, Mr Marquet, to give evidence before the Royal Commission. I cannot, at this time, be specific as to when his evidence might be conveniently taken, except to say that I would not expect it to be in the next couple of weeks.

I would also be pleased for an intimation as to whether a Royal Commission investigator can arrange to interview Mr Marquet during this week. The topics which he would wish to cover are :

- (a)        The dates during which Mr Marquet was involved in the process of preparing the petition;
- (b)        Details of any checks he personally made in relation to the contents of it;
- (c)        Details of the dates of various meetings with Mr Easton and Hon J Halden MLC;
- (d)        His knowledge of the date when the petition was signed;  
The physical appearance of the petition; and
- (e)        What documents were provided to him by Mr Easton and what became of them.

I await your reply.”

2.5.2            By letter dated 23 August 1995, I was notified by the President that the Legislative Council granted the permission sought on 22 August.

## **2.6      Privilege of Marquet, Clerk of Legislative Council**

2.6.1            I concluded and ruled that Marquet may be asked questions directed to his knowledge of the events up to the time of his certification of the petition as required by the Standing Orders but that he was not vulnerable to “questioning” of his conduct so as to raise the “matter” enquired into by the Select Committee. I so acted out of an abundance of caution despite there being a grey area between his role as a Parliamentary officer for which he is solely answerable to Parliament, if at all, and any other conduct which may be contended to be outside that area.

2.6.2            In the result, I have not included Marquet as a holder of public office vulnerable as such to adverse finding by the Commission.

## **2.7      Privilege of Hon John Halden MLC**

2.7.1            I have concluded, however, that Halden is in a different position. His conduct in presenting the petition is clearly privileged. I say nothing in that regard.

2.7.2            His conduct prior to the petition being presented and, in particular, prior to the decision of Easton to seek its presentation, are clearly within the Terms of Reference unaffected by matters of privilege. That conduct was expressly denied by the Foss Committee to be a “matter” for Parliament as also was the conduct of Halden outside Parliament after the presentation of the petition in so far as that conduct amounted to adoption of Easton’s allegations as his own or to his

making statements of his own as to their meaning, gravity, strength and legal consequences.

## **Chapter 3**

### **3. NARRATIVE OF CIRCUMSTANCES AND EVENTS**

#### **3.1 Introduction**

3.1.1 This chapter contains a narrative of the events as I find them to have been. Chapter 4 discusses critical issues and reasons for my conclusions about them.

3.1.2 The intimate details of what happened are known only by those who took part in the events; in the main, those whose conduct was the subject of inquiry. Only some of those persons have provided information found to be reliable. For the most part, witnesses were interested to underplay their role or to have that role seen in the most favourable light. Their testimony is limited in detail. It has been possible only to distil the essence of what occurred. Many questions remain unanswered because the dates, the detail and accuracy of what was said by persons on different occasions, not being the subject of any reliable record, could not be satisfactorily obtained. Much, of course, was due to genuine memory imperfection.

3.1.3 The core, however, of what was said and done was established. Its reliability is grounded in the fact that it was established from those who would clearly have preferred that it never saw the light of day.

#### **3.2 Background**

3.2.1        The petition was presented on behalf of Brian Mahon Easton (“Easton”). It was one of many salvos fired in the bitter dispute between him and his former wife (“Penny Easton”) and members of her family. On this occasion, Easton’s principal target was Margaret McAuley (“Margaret McAuley”) born Margaret Campbell, a sister of Penny Easton.

3.2.2        The allegation against the present Premier of Western Australia (to whom I shall refer as “Richard Court”) and who was then the Leader of the Opposition, arose from the disclosure in the Family Court that he had provided documents, mainly company directors’ minutes, to Penny Easton. It was also not unrelated to the fact that in the mid-1980s Richard Court was one of a number of Liberal members who had made statements in Parliament which were highly critical of WA Exim Corporation Ltd (“Exim”) of which Easton was managing director.

3.2.3        The advisers of Penny Easton thought that the documents might contain information about Easton’s possible assets, the extent of which were contested in the property dispute litigated in the Family Court. As the documents were in her custody or power she “discovered” them, that is, disclosed in an affidavit that she had them. None of these documents became exhibits in the Family Court proceeding or turned out to have relevance. It was only because Penny Easton had been given the documents, not that she did anything in particular with them, that Easton complained.

3.2.4        As at November 1992 proceedings had been on foot in the Family Court for some six years and yet another application was to be made on behalf of Penny Easton on Monday 9 November 1992, the day on which she died.

3.2.5        The Eastons were married on 14 June 1978 in Malta. She was 26 and he was 51. He was the father of five children by his previous marriage. His

daughter had been Penny Easton's best friend from childhood and it was through her that she met Easton.

3.2.6 Penny Easton was born Penny Campbell, one of three daughters of Barbara Campbell and Alec Campbell who had been a British Airways pilot. Her sisters were Sandra and Margaret Lorraine (McAuley). The Campbells migrated from England to Australia in about 1974 when Alec Campbell had retired from British Airways. Penny Easton had become a fully qualified nurse in the United Kingdom and had a degree in psychology from a tertiary institution. At the time of her death she had a law degree from the University of Western Australia and employment as a solicitor with the government.

3.2.7 A child Adam was born to the Eastons on 12 March 1979.

3.2.8 The Eastons left Malta after the marriage and lived in England until they migrated to Australia in 1981. They separated on 30 July 1986. There was a hearing of their property dispute in the Family Court in April 1988. Judgment was not given until 23 June 1989.

3.2.9 Before his marriage to Penny Easton, Easton had been in business in the building industry in England. Later, he had managerial experience in Iran and other countries of the Middle East in the same specialised area of modular housing.

3.2.10 His first employment in Australia was as general manager of the Komatsu Division of Mitchell Kotts in October 1981.

3.2.11 On 15 April 1985 he was appointed managing director of Exim the shares in which were wholly owned by the government. Exim became a statutory

corporation in 1987 pursuant to legislation passed in December 1986. Exim owned shares in another company called Goldrock Investments Pty Ltd ("Goldrock"). Easton was a member of the Board of Exim during the one year three months of his association. He resigned from Exim on 25 June 1986.

3.2.12 During 1985 and 1986 Liberal Party members of Parliament conducted a series of Parliamentary attacks on Exim. One such attack was made on 9 October 1985 by the Hon. William Hassell MLA who raised the issue of the granting of an Education Department contract to a company partly owned by Easton.

3.2.13 Another was made by Richard Court. On 25 November 1986, during the debate on the Second Reading of the Western Australian Exim Corporation Bill, Court made a speech which referred, among other matters, to dealings of Exim with Goldrock. There was an interjection by the Hon. David Parker MLA, the Minister responsible for Exim. Court's response was this:

"This could be a very lengthy debate because I can go through and particularise each item of expenditure if the Minister so requires. We have the full set of minutes of the company's operations. I am sure the Minister does not want me to go into that sort of detail." (Underlining is added)

3.2.14 He went on to refer specifically to what occurred at Goldrock Board meetings on 6 February, 17 February and 24 February 1986. Richard Court was not asked and did not name the source of any of these documents. In fact, he had been given the documents (or most of them) by Edward John Withers ("John Withers"), a director and shareholder of Diamond Syndicate Pty Ltd which owned a substantial number of shares in Goldrock. Court mentioned John Withers by name as a shareholder of Goldrock but not that he had provided him with the minutes. Court was not asked to table the documents nor did he do so.

3.2.15 Thus, as at 25 November 1986, Richard Court had made it clear in Parliament that he had possession of minutes of directors' meetings of Goldrock. No issue was made of it at the time by anyone, notwithstanding that Exim, a wholly government owned corporation, was a shareholder in Goldrock and was represented on its Board of Directors. Further, in his evidence before this Commission, Richard Court said that, following his speech, he was not contacted by any representative of Exim or Goldrock questioning his possession of those documents. He was, however, contacted by the media to whom in late 1986 or early 1987 he provided copies of all the board minutes in his possession.

3.2.16 During the same debate, the Hon Ian Laurence MLA alleged that Mormac Corporation had been introduced by Exim to the developer of a tourist resort project in the Kimberley as a potential investor or financier and referred to a dishonoured \$550,000 Mormac cheque and a related bank letter ("the Mormac cheque").

3.2.17 Easton resigned from Exim on 26 June 1986. I have not investigated, and do not know, why he did. He was offered a five year appointment as a Commissioner of the Public Service Board which he accepted and took up on the following day. Easton was also made Chairman of the Functional Review Committee. He was paid the difference between his Exim salary and his Public Service Board salary for the balance of his contract.

3.2.18 Easton was told by letter dated 9 March 1988 that the Public Service Board was to be replaced by a single Commissioner and as his original appointment was for five years he was offered a contract for the balance of the period as a consultant. By letter dated 24 June 1988 signed by F Campbell as Public Service Commissioner, Easton was appointed consultant to the Public Service Commissioner until 27 June 1991.

3.2.19 For the purpose of her claim against Easton for property settlement in the Family Court, Penny Easton deposed in an affidavit sworn 18 April 1988 that Easton had told her that when he was invited to become a Public Service Commissioner he would be involved in the number of public servants being reduced and that he would receive payment of \$200,000. I will refer later to her precise evidence.

3.2.20 Penny Easton's mother and her two sisters also said that Easton said the same or a similar thing to them. Easton denied having said it and denied that he would receive any such payment. The issue was relevant to the claim of Penny Easton for division of property. Easton called evidence to support the absence of any such arrangement.

3.2.21 The Family Court judge believed Penny Easton and members of her family and disbelieved Easton's denial of what he was alleged to have said. The judge made orders which took into account an expected receipt of \$200,000. There were other allegations in the course of the proceedings that Easton had failed to disclose assets and that he had told witnesses that he had assets overseas which would not be found.

3.2.22 Hearings before the Hon Justice Ferrier in the Family Court were on 26-29 April, 2-4 May and 23 June 1988. Judgment was given on 23 June 1989.

3.2.23 Orders were made that Easton make over a motor car to Penny Easton, that she have custody of Adam, and that Easton discharge the substantial mortgage on the matrimonial home of which she was to have sole ownership.

3.2.24 Easton did not accept and never has accepted the findings against him and took steps to nullify the orders (save, perhaps, the order for custody).

3.2.25 On 7 July 1989, some two weeks after judgment, Easton filed a petition for his own bankruptcy on the basis that he did not have assets to enable compliance with the orders.

3.2.26 On 25 November 1989 the Official Corruption Commission Chairman, the Hon. John Wickham QC (formerly Mr Justice Wickham of the Supreme Court of Western Australia) compiled an explanatory statement ("the Explanatory Statement") from details given to him by Easton of his complaint about the "perjury" of Penny Easton and members of her family in what they said about the \$200,000 payment. He described what they said as an allegation that he had received or would receive a "corrupt" payment. Easton also complained to Mr Wickham that documents, which he described as "highly confidential", comprising the Mormac cheque and directors' minutes of the boards of Exim and Goldrock had been provided to Penny Easton by Richard Court. The Explanatory Statement is Annexure 9.

3.2.27 Easton said that he went to the Official Corruption Commission ("OCC") "to report himself", that is, to have what he claimed to be the allegation, namely, receipt of a corrupt payment, investigated so that "his name would be cleared". No evidence on the question could be called from the OCC due to the secrecy provisions of the the OCC Act.

3.2.28 Mr Wickham sent the Explanatory Statement to the police pursuant to his powers under the OCC Act but referred for their investigation pursuant to his powers only the allegation against Richard Court. He drew the

attention of the police to the perjury allegations but he did not do so pursuant to any power conferred on him under the Act.

3.2.29 The investigation of the Richard Court allegations referred by the OCC was conducted by Detective Superintendent Barrie Rolinson and Detective Senior Sergeant (now Detective Inspector) Robert Hersey who were members of "E" Command, a special task force to investigate corruption, including matters on reference from the OCC.

3.2.30 Hersey and Rolinson met with Easton on 12 December 1989 when Easton indicated that he wanted all the matters outlined in the Explanatory Statement to be fully investigated. They interviewed Richard Court on 4 January 1990 about documents he had given to Penny Easton. Court told them that the documents were in the public domain having been referred to in Parliamentary debate and the reference having been reported in Hansard.

3.2.31 On 24 January 1990 Hersey obtained an opinion from a Crown Law solicitor regarding the contention of Richard Court.

3.2.32 On 26 March 1990 Hersey reported to Rolinson that there was no evidence to sustain any allegation of conspiracy or corruption against Richard Court (T/s 2845) He also concluded that there was insufficient evidence to sustain the perjury allegations.

3.2.33 On 26 May 1990 Hersey and Rolinson told Easton their conclusions. Easton was displeased and requested that they make further enquiries about the perjury allegations. The police agreed to do so and made the enquiries which Easton asked them to make.

3.2.34 On 19 October 1990 Hersey told Easton at Police Headquarters that these enquiries had been made but that there was insufficient evidence to charge any person with perjury and that the police would not make any more enquiries.

3.2.35 Easton requested a letter from the police about the “corruption” of which he claimed that he had been accused. Rolinson sent a letter dated 18 December 1990 to Easton exonerating him.

3.2.36 On 30 January and 25 February 1992, in response to their enquiries, Hersey wrote to Barbara Campbell and Penny Easton, informing each respectively that no evidence had been discovered to support Easton’s allegations of perjury.

3.2.37 The Easton proceeding was fixed for further hearing in the Family Court on 24 September 1991. On 19 September 1991, a Minute of Agreed Facts was signed by the solicitors for the parties. Barbara Campbell said that the document was signed without the consent of Penny Easton. Easton said that it was signed after agreement between the solicitors.

3.2.38 Whatever were the circumstances which led to that document being signed, the hearing did not proceed. A Minute of Agreed Orders was signed by both parties and orders based on it were made by the court. The preamble to the Minute of Agreed Orders asserted that the previous orders constituted a “miscarriage of justice”. The judge declined to acknowledge that there had been “a miscarriage of justice” and excluded the words from the orders which he made on 24 September 1991. A copy of those orders was not included in the documents later provided by Easton to Halden and Marquet but the document containing the preamble was provided.

3.2.39 Thus, by the end of 1991 the OCC had considered Easton's complaints and referred them to the police for investigation. The police had investigated them, drawn their conclusions and advised Easton of the outcome. Inspector Rolinson had provided Easton at his request with a letter of his exoneration. The original orders in the Family Court property settlement proceedings had been varied by the consent order of Ferrier J on 24 September 1991 which nullified the effect of his previous orders which took account of a \$200,000 lump sum to be paid to Easton.

3.2.40 Easton said that in October 1992 he saw on television that Margaret MacAuley was appointed by the Legal Aid Commission to play a role in the work of the Legislative Council Standing Committee on Constitutional Affairs and Statutes Revision ("the Pike Committee"). He said that he decided to do something about it because Barbara Campbell broke an agreement he made with Penny Easton shortly after the second Family Court hearing to the effect that neither of their families would raise the \$200,000 matter again. Easton said that Barbara Campbell broke that agreement by "bombarding the press and taking the matter to parliament". He was referring to a submission which Barbara Campbell made to a Select Committee which enquired into the Official Corruption Commission in January 1992.

3.2.41 Barbara Campbell denied that she breached any agreement and denied that any such agreement ever existed. Easton said that the agreement to which he referred included "the families", but Barbara Campbell said that she was not told about it.

3.2.42 Barbara Campbell said that after she was interviewed by the police in January 1990 about the perjury allegation she wrote to the then Premier,

Dr Lawrence, expressing her concern about that course of events. She did not receive a reply. She also wrote to the OCC.

3.2.43 At this stage, Barbara Campbell saw a reference in the newspaper to a Parliamentary Select Committee into the Official Corruption Commission. She put in a submission to it and was called to give evidence. The hearing was not open to the public. She and those who accompanied her were specifically told that they could not discuss the matter outside the Committee. When a copy of her evidence before the committee was provided to her, Barbara Campbell was again advised that she could not discuss any of her evidence pending the tabling of the report.

3.2.44 The evidence of Barbara Campbell on 17 January 1992 and the tabling of the Select Committee's Report in Parliament on 5 March 1992 were the only occasions upon which matters raised by her relating to Easton were dealt with in Parliament. Her evidence does not appear to have received any media attention either at the time it was given or when the report was tabled.

### **3.3 Circumstances and Events preceding the Petition**

3.3.1 On 2 October 1992, Easton told his solicitor, Mark McAuliffe, that he wanted his allegations against Margaret McAuley brought to the attention of the Pike Committee (chaired by Robert Pike).

3.3.2 McAuliffe suggested, and Easton agreed, that he, McAuliffe, speak to Pike (whom he knew personally) and ask him how the matter could be best drawn to the attention of the Committee. McAuliffe spoke to Pike on 2 October and told him that there were serious allegations against Margaret McAuley. He does not believe that he provided any detail of those allegations.

3.3.3 Pike recommended that Easton write a letter to the Chairman of the Public Service Commission, Dr Wood, and send copies to the Premier (Dr Lawrence) and Pike. Easton did this by hand written letter dated 12 October 1992 ("the 12 October letter").

3.3.4 In it Easton urged Dr Wood to "check the source of the advice you received in relation to Mrs McAuley's appointment". The allegation against Richard Court was not mentioned but he referred to the Explanatory Statement which did contain it. Easton mentioned "assembling further documentation to be forwarded to the Police Commissioner". He expressed his belief that "this may well result in charges of perjury and/or conspiracy to pervert the course of justice, being laid".

3.3.5 The letters and copies were despatched but the receipt dates are unclear. Mark Hilditch, Clerk to the Pike Committee, received a copy on 14 October but was unable to recall when he provided further copies to the Pike Committee members. A letter to them from Hilditch dated 21 October, would seem to indicate that the letter was not forwarded to them until at least that day or later.

As there was a Committee meeting on 21 October, Hilditch said that he would have handed his letter with the supporting materials to the Committee Members on that day. Hilditch could not recall discussing the contents of Easton's letter with any Committee member prior to drafting the letter of 21 October.

3.3.6 No further information was provided in the covering letter to Pike. However, the covering letter to Dr Lawrence referred to contact by Easton with the electoral office of the Hon Robert Pearce MLA. Dr Lawrence said that she did not see this letter at the time and there is no evidence that she did. A reply on her behalf was not drafted and sent until February 1993.

3.3.7 Pearce said in his evidence that one of his staff members told him that Easton had telephoned and that he had "some information which bore on Richard Court to his disadvantage arising from a family law action". Pearce was not precise about the date but said it was "at least a week ...., probably two" before his resignation from cabinet on 21 October. Easton confirmed that he had called Pearce's electoral office but could not recall the date. He denied telling any member of Pearce's staff that he had an allegation against Richard Court.

3.3.8 Pearce said that he declined to return the call from Easton because he had a personal rule never to touch allegations which arose from Family Court actions. Easton later contacted Halden.

3.3.9 Patricia Adams was a volunteer worker in Halden's office. During the week commencing 19 October 1992 she was in charge of the office. Joanne Whalley, the electoral secretary, was away on leave. Adams took a telephone call from Easton but she cannot remember on what date she took it. She gave the following account of what was said:

"Basically he felt that Richard Court was involved in something he didn't believe he should be and for some reason - I don't even know why I remember this much - he was aware that Halden was on a committee that was into some type of corruption that was running parallel to the royal commission at the time. I do remember him saying he had a document. What the document was, I don't know. He felt that Halden was the best one he could contact to help with that document."

3.3.10 Patricia Adams took a note of the message, which was not produced. The only other aspect of the call which she remembers is that she was told that Easton could only be contacted by fax.

3.3.11 Adams wrote a fax to Easton dated 23rd October containing the following message:

'PLEASE FAX THAT DOCUMENT TO MR BERINSON'S OFFICE ON 321 3119 AND MARK IT ATT. JOHN HALDEN'.

'THAT DOCUMENT' was the document mentioned in the telephone conversation. It is inferred that it was the Explanatory Statement which contained the allegation against Richard Court.

3.3.12 Patricia Adams was relatively inexperienced. She was unable to explain why the document was to be faxed to "Berinson's office" (which was the location of the fax machine of the Hon Joseph Berinson MLC at Parliament House).

3.3.13 Easton agreed that contact was made with Halden's office substantially as outlined by Adams but denied that he mentioned any details of his grievances to her.

3.3.14 Patricia Adams' account of her conversation with Easton is similar to Pearce's account of Easton's contact with his office.

3.3.15 Easton said that his call to Halden's office was on 23 October. In my view, the call was likely to have been earlier and could have been made any time during the week 19-23 October 1992.

3.3.16 One of the Premier's press secretaries, Zoltan Kovacs, was first contacted by Halden by telephone on a date which he fixes as 19 October 1992. He was told that Halden wanted "to discuss something that had come up in the Pike Committee". He was not told what it was. It was arranged that Halden would probably come in the next day and would ring before he did. Kovacs said that Halden attended the Premier's office to meet with him on either the following day or the day after that.

3.3.17 When Halden came in, he told Kovacs about the Easton grievances. He told him that Richard Court had provided confidential Exim documents for use in a divorce proceeding and was being investigated as a result of a complaint to the OCC. There was also mention of a \$200,000 pay-out and "some sort of relationship between Mrs Easton and Richard Court". Halden had with him some documents to which he referred.

3.3.18 Kovacs considered that the matter was not within his area of responsibility and called in fellow staff member Edward Russell whose responsibility was in the area of Parliamentary services. Russell was Halden's first source of advice about a possible Parliamentary forum for Easton's grievances. It was later that contact was made with the Clerk of the Legislative Council, Marquet, for his advice. Robert Willoughby (another press secretary of the Premier, senior to Kovacs) was invited to join the discussion. The meeting concluded with Russell advising Halden to "check the facts".

3.3.19 Russell and Kovacs then went to the Premier's office. Dr Lawrence was told that "John Halden had been in and that he had brought in a complaint by a Mr Easton about his divorce proceedings, that part of the complaint related to Richard Court and the use of apparently leaked documents from Exim as part of the evidence put to the Family Court." There was discussion about there being two Brian Eastons. Dr Lawrence was advised that it had been suggested to Halden that he go away and check the facts.

3.3.20 The matter came up again "several days later" when Halden returned to the Premier's office. The discussion on this occasion was mainly between Halden and Russell but Kovacs was in and out of the room and heard them discussing Margaret McAuley. The meeting was 20 minutes to half an hour. At a later stage Russell told Kovacs that it had been decided that they would suggest to Easton that he should lodge a petition of last resort. Halden was to go and see the Clerk of the Legislative Council about drawing up a petition.

3.3.21 There were meetings between Halden, Marquet and Easton; between Halden and Marquet and between Easton and Marquet which culminated in the preparation and signing of the petition. There was a degree of conflict between them as to the dates, the number and the content of these meetings. What is clear is that during the week commencing 19 October Easton spoke to Halden, as a member of the Pike Committee, about his complaint against Margaret McAuley. At that time he also referred to the allegation against Richard Court. Halden said that he saw "the political significance" of this allegation (T/s 1966).

3.3.22 In the course of these meetings Easton produced documents which he said supported his allegations. At one stage, Marquet asked him for more documents. Halden read some documents. Marquet read them all, although some "not in any great detail".

3.3.23         Although Easton wished to pursue his grievances he had no particular procedure in mind. He did not approach Halden with the specific purpose of having the matter dealt with in Parliament, other than through the Pike Committee (T/s 1755). The idea of using a Parliamentary procedure to air Easton's grievances came from Halden, having first visited Marquet and asked him "in relation to the airing of this particular grievance and what would be the best way of doing it through Parliamentary procedure" (T/s 2240). Marquet understood that his advice was sought "in relation to parliament" (*ibid.*). This was their first meeting which occurred no later than 23 October. On that occasion Easton's "options" were discussed. Halden said that initially there was no view on his part that it would be "a parliamentary exercise particularly" (T/s 1984). He said:

"In originally going to Mr Marquet as a solicitor, it was also that there may have been options open to him in the legal framework external to the parliament that he could have advised Mr Easton, more particularly than me, that may have assisted him." (T/s 1984).

3.3.24         I accept the evidence of Marquet. There is no evidence that any process for the airing of Easton's grievances, other than a Parliamentary one, was ever suggested. It was Halden who saw Parliament as the best vehicle for promotion and publicisation of the allegation against Richard Court and sought advice only about how this could be best done from his point of view.

3.3.25         It was Marquet who raised the option of a petition at the initial meeting with Halden (even before Halden met Easton). The second meeting between Halden and the staff of Dr Lawrence's office, referred to above, took place after that discussion in which Marquet raised the possibility of a petition.

3.3.26         There was a meeting between Halden and Marquet for the specific purpose of discussing whether a petition "was the appropriate way to go". They

concluded that it was and later convinced Easton, who was otherwise unfamiliar with Parliamentary procedures, that a petition would be the appropriate avenue for airing his grievances. At the same meeting Halden and Marquet agreed to conduct some checks to clear up what Marquet described as “loose ends”. (See also paras 6.2.8 and following).

3.3.27 Marquet contacted Mr Ayton, the Assistant Police Commissioner (Crime Operations) and asked him the following question:

“In cases where police inquiries are made at the request of the OCC, is it always the case that the complainant is advised of the end result of the police inquiry.”

Mr Ayton’s response was “No”.

Marquet made no further checks on the information provided to him by Easton.

3.3.28 On 26 October Halden spoke to the Executive Officer of the OCC, David Orr, and requested information about the Richard Court/Easton matter. David Orr advised him that he could not discuss whether any such matter had been dealt with or not because he was prevented from doing so by the confidentiality provisions of the OCC Act.

3.3.29 The only other enquiry made by Halden was of a Bradley Matheson who at the time was employed as the senior policy adviser to the then assistant treasurer, the Hon. Dr Gallop MLA. Halden asked him to find out “whether or not the then leader of the opposition and/or any other member of the state opposition had access to the minutes of the Exim Corporation and/or a company by the name of Goldrock”. The enquiry did not specify a time frame for this access.

3.3.30 Matheson was first approached by Halden approximately two weeks before the tabling of the petition.

3.3.31 There was a follow up call to Matheson a week later from Darren Ray. Ray was at that time the electorate officer for the Hon Jacqueline Watkins MLA. He was also a friend of Halden and formerly his electorate officer.

3.3.32 Matheson made enquiries from Raymond Hughes in the Department of Treasury before he answered Halden's enquiry. Hughes advised that "as far as he could determine, the opposition leader and/or opposition members had not had access to any Goldrock or Exim minutes....either through Exim Corporation or through a request to the relevant Minister". This information was given by Matheson to Ray and then to Halden. Clearly the response related only to access through Exim or any Minister. Halden did not enquire about any other means by which company Board minutes might be procured.

3.3.33 Once the petition procedure was decided upon, Marquet made a draft of the petition. Halden did not take part in the drafting but retained his involvement. There were a number of drafts of the petition or alterations of the original (it is not clear which) between 23 October and 4 November. The drafts were not retained. The exact dates and the contents of them cannot now be ascertained. The final version of the petition was signed on 4 November 1992.

3.3.34 Halden maintained contact with the Premier's office. Late in the week preceding the presentation of the petition Halden again went to the Premier's offices. He asked to see the Premier and went in to her office accompanied by Willoughby and Kovacs. Halden had an A4 typewritten document with him containing only a few pages. He handed it to the Premier and used words to the effect: "It's been fixed". Dr Lawrence looked at the document briefly before

handing it back to Halden. While there was no specific reference to the content of the document, the meeting and discussion related to the Easton matter.

3.3.35           The date of this meeting cannot be established with certainty. Kovacs believed that it was on Friday 30 October. Willoughby believed it to be "some time after" he accompanied Dr Lawrence to Canberra to address the National Press Club which took place on 29 October. He thought it likely to have been that Friday or the following Monday.

3.3.36           The members of Cabinet and its Secretary on 2 November 1992 were :

Hon Carmen Lawrence MLA  
Hon Ian Taylor MLA  
Hon Joseph Berinson MLC  
Hon Kay Hallahan MLC  
Hon Keith Wilson MLA  
Hon Pamela Beggs MLA  
Hon Ernest Bridge MLA  
Hon Gordon Hill MLA  
Hon Graham Edwards MLC  
Hon Yvonne Henderson MLA  
Hon David Smith MLA  
Hon Geoffrey Gallop MLA  
Hon Judyth Watson MLA  
Hon Eric Ripper MLA  
and       John Kobelke MLA (Secretary)

3.3.37           On Monday 2 November 1992 the regular Cabinet meeting was held. The meetings generally started at 10 am and finished by 3 pm with a short break for lunch. The order of business was flexible although usually the formal agenda was dealt with first and the informal agenda followed. Item 1 on the informal agenda for 2 November was the Premier's Report.

3.3.38 In the informal part of the meeting, which occurred late in the meeting on this occasion, Dr Lawrence raised the Easton matter with members of Cabinet then present. She told them that it involved an allegation against Richard Court and that it was intended to raise it in Parliament. Time estimates for the discussion varied. Discussion was of the order of 15-20 minutes. Several of those present recall that the conversation was “lively”. Taylor described it as “forthright”; Judith Watson said it was “vigorous and forceful”; Gallop spoke of “immediate hostility” to the idea that this matter would be taken up. Wilson said that Gallop voiced his objection “very vociferously”. Pamela Beggs said that Wilson lowered his head into his hands and groaned. Faced with this response, Dr Lawrence said words to the effect that the matter would be brought back to Cabinet before it was taken any further.

3.3.39 At least two members of Cabinet raised the matter with their staff later that day. Wilson spoke to his senior policy officer, Francis Sullivan. Sullivan described Wilson as ‘upset about a discussion he had with some of his colleagues about a potential Parliamentary procedure involving Halden’. Stephen Imms, Beggs’ Principal Private Secretary, gave evidence that after the Cabinet meeting Pamela Beggs mentioned that “something was going to happen in Parliament involving Halden and that it would be damaging to Richard Court”.

3.3.40 Marcelle Anderson, the Chief Executive of the Department of the Cabinet, went unannounced to the Premier’s office on what she believed was that day. She was not precise about the time but thought it was about 3 or 4 pm. She was invited in by Dr Lawrence. Kovacs and Russell were also present. Russell explained what they were discussing. He said that Richard Court was under investigation by the police for passing over confidential documents in a Family Court matter. He mentioned that Penny Easton and Margaret McAuley had supposedly committed perjury in the Family Court. Marcelle Anderson was

reminded by Russell that Margaret McAuley was involved with the Western Women issue. Russell also said that the matters were to be raised in Parliament.

3.3.41           Marcelle Anderson said:

"I asked why we would want to get involved in something to do with the Family Court because again I was concerned about the reliability of the information we had been given, and I think I said something along the lines that, you know, truth is a casualty in these matters and it is very risky to take sides."

3.3.42           Dr Lawrence said in her evidence that her diary revealed an appointment in Ballajura, the timing of which would have prevented her from being in her office at the time Marcelle Anderson alleged. This view was supported to some extent by a statement of Joanne Agnew, a senior policy officer in the Premier's department. However, Anderson was never precise about the time of this meeting . Joanne Agnew said in her statement, which was received due to her absence overseas, that there was a "gathering in the Premier's office on the late afternoon of that day attended by Anderson". To that extent she supports that a meeting occurred on that day at which Anderson and Dr Lawrence were present. Joanne Agnew was not cross-examined due to her absence. She denied in her statement that the Easton petition was discussed. I accept the evidence of Marcelle Anderson as to the content of the conversation in which she took part. She could be mistaken about the time of day when it took place, or even the day, but it is of no account.

3.3.43           On Tuesday 3 November Kovacs saw Halden at Parliament House. He asked him whether he had presented the petition. Halden indicated that he had not and there was no further discussion.

3.3.44           The final occasion before the presentation of the petition on which the Easton matter was discussed in the Premier's office occurred on the evening of 4 November at Parliament House. The Premier, Halden and Russell were all present. On this occasion Halden came into the Premier's office after the evening news bulletin and advised that the petition was to be tabled the following day. At the same time he again referred to what the petition was about and mentioned that Marquet had approved its content and wording. There was some discussion as to whether Berinson had been advised. Halden left to go and inform him. Later Berinson came into the office and spoke to Dr Lawrence to verify that she was aware that the petition was to be presented.

3.3.45           Early in the afternoon of Thursday 5 November 1992 the petition was tabled by Halden.

#### **3.4       Issues of concern in Dr Lawrence's Office**

3.4.1           In the weeks and days before 5 November 1992, Dr Lawrence was under pressure on a number of matters. She had a particular worry about the threat of press disclosure of a police investigation concerning \$5000 advanced to her for the purposes of an overseas trip which came to be cancelled as a result of her becoming Premier in 1990.

3.4.2           A Select Committee of the Legislative Assembly had been considering the circumstances of a grant of land by Dr Lawrence's government to the University of Notre Dame and whether she had misled Parliament in relation to it.

3.4.3 On 20 October 1992 Dr Lawrence found it necessary to apologise to the House for having misled it when speaking about her knowledge of the collapsed Western Women Management Pty Ltd which, under the management of Robyn Greenburg, had, among other things, been the source of loss to investors.

3.4.4 On the same day, 20 October, Part I of the Report of the Royal Commission into the Commercial Activities of Government (1992) was tabled in Parliament. Its conclusions were damaging to the government and one Minister (Hon Robert Pearce MLA) and the Cabinet Secretary (Hon William Thomas MLC) resigned.

3.4.5 The \$5000 problem stemmed from an investigation in mid-1992 into the use by members of Parliament of the Parliamentary Imprest System by police members of the Official Corruption Task Force. Dr Lawrence had been interviewed by the Officer in Charge of the inquiry on 14 August and 25 September 1992 and a report prepared by that officer dated 9 October 1992. The case was referred to the Director of Public Prosecutions, John McKechnie QC, as a result of differences of opinion between investigating police officers whether there was a *prima facie* case of "stealing" as defined by the Criminal Code.

3.4.6 On Tuesday 3 November 1992, McKechnie received an enquiry from Alison Fan MacLaurin ("Alison Fan"), a journalist at Channel 7 about the matter.

3.4.7 At or about the same time Alison Fan made an enquiry of Willoughby at Dr Lawrence's office. Over the next day or so there were conversations between Alison Fan and members of Dr Lawrence's staff which made it apparent to the latter that there was an urgent risk that the police investigation regarding the \$5000 would be disclosed in the media before its

outcome was determined. Alison Fan more than once requested an interview with Dr Lawrence about the matter.

3.4.8 On Wednesday 4 November, McKechnie met Dr Lawrence's solicitor Christopher Humphry who made submissions that no offence had been committed. McKechnie made no response to Humphry. He later formed an opinion, after discussion with senior staff, that there was no *prima facie* case and set about putting it in writing for consideration by the Police Commissioner who had the final say whether Dr Lawrence was to be prosecuted. His written opinion was hand delivered to Police Commissioner Brian Bull late on 5 November. Neither McKechnie nor any of his staff told anyone else his opinion before that time.

3.4.9 Early on Friday 6 November, the Police Commissioner discussed the opinion of McKechnie with senior officers and decided against prosecution. He then made that decision known in the course of the day.

### **3.5 Communication with Media**

3.5.1 The television journalist Parry said that he was first told about matters concerning the petition some time between 26 October to 2 November 1992. Parry refused to say from whom he received that information or its details. John Rudd, Parry's news director at Channel 7, confirmed that Parry told him approximately one and a half to two weeks before 5 November that he was "working on a story regarding Richard Court". At some time before the date of presentation, Parry told Rudd that there was a personal or "possibly sexual association" between Richard Court and Penny Easton. This evidence was confirmed by Alison Fan (also with Channel 7) who had known of rumours about a possible relationship between Richard Court and Penny Easton for "a couple of

weeks at least" before the presentation of the petition. It is accepted, on all sides, that there was never any such relationship. I find that there was not.

3.5.2 Halden said that he was told by Willoughby on 4 November 1992 to contact three journalists, Parry, Mark Irving (*The Australian*) and Paul McGeough (*The West Australian*) to alert them that the petition was going to be presented the next day. Willoughby denied any knowledge of the steps Halden took to advertise the fact that the petition was going to be presented.

3.5.3 Irving was told in advance by Halden at Parliament House to be in the Legislative Council gallery on Thursday, as "something worth his while" would occur. Irving placed this conversation as probably on 3 November, but Halden said that it was on 4 November. Irving said that Halden also told him that he had first "some things to check" with the Clerk of the Legislative Council.

3.5.4 McGeough said that he detected an "energy in the atmosphere" on 4 November. When he began enquiries, Dr Elizabeth Constable (an Independent member) told him that something involving Richard Court and Halden was going to occur that would cause Richard Court "severe embarrassment".

3.5.5 McGeough then spoke to Halden, who confirmed that he should be in the Legislative Council the next day. At some stage McGeough was told that whatever was to occur involved a relationship between Richard Court and Penny Easton, but he could not recall who told him. He then told the Editor of *The West Australian*, Paul Murray and colleagues of that newspaper, Grace Meertens and Malcolm Quekett, on 4 November 1992. He told his Chief of Staff, Steven Loxley, on the following morning.

3.5.6 Another journalist Diana Callander, with *The West Australian*, was also told in advance to be in the Legislative Council on 4 November 1992, but could not recall by whom she was told. She passed on that information to McGeough and Meertens.

3.5.7 Alison Fan said that Willoughby told her on Thursday morning (5 November) that there was a “bigger story” (than that of the imprest account) “about to break”, a “scandal to do with Richard Court”.

3.5.8 David Humphries with *The Melbourne Age* and *The Sydney Morning Herald* was told by Loxley at lunch on Thursday, 5 November 1992 that there was “going to be the tabling of a petition that would implicate Richard Court in a Family Law Court matter”.

3.5.9 Halden arranged a meeting between Parry, Easton and Ray for the morning of 5 November. Easton did not know about it in advance and was surprised when approached by Parry for an interview. Easton was, generally speaking, not told about or asked to sanction the extensive media involvement arranged by Halden.

3.5.10 McGeough said that at the time the petition was presented, the Council was “jam packed”. There was a “huge press presence on the day by comparison with the normal business of the Upper House”.

### **3.6 Circumstances and Events after the Petition was tabled**

3.6.1 The petition was widely publicised by the media. The front page of *The West Australian* carried the headline “Double Trouble” and the *Channel 2, 7*

and 9 news bulletins on 5 November made it the lead story. The next morning, 6 November, members of the media had “staked out” the home of Easton. Easton was upset and contacted Halden. A media interview with Easton was then arranged by Ray at the Wanneroo Shopping Centre Park, which was on the other side of the road opposite the office of Jacqueline Watkins. Ray had contacted a number of journalists and some chiefs of staff including Tina Fong Sam from *Channel 2*, John Cunningham from *Channel 9* and Kieran Murphy from *Channel 10*.

3.6.2 On 6 November 1992, the Police Commissioner telephoned Dr Lawrence and formally told her the outcome of the investigation, and he read to her the contents of his draft press release entitled “Premier Cleared by Police”.

3.6.3 He also contacted Richard Court on the same day and produced a media release headed “Leader of the Opposition cleared by Police” regarding the investigation referred by the OCC.

3.6.4 On 9 November, Penny Easton committed suicide. It was reported on afternoon radio, and in *The West Australian* of 10 November under the headline “Death of Woman in Court Row”.

3.6.5 Counsel for Dr Lawrence explored with witnesses whether any discussion took place at the 9 November Cabinet meeting concerning the matters contained in the petition. No witness gave evidence that he or she had any recollection of the Easton matter being raised. It is not likely that it was.

3.6.6 The suicide of Penny Easton was mentioned in the ALP Caucus meeting on 10 November by Attorney General Berinson. There is a minute of what he said:

“Berinson commented that there were different views on the advisability of presenting certain petitions to the Parliament. He went on and said that members should not be confused with the appalling tragedy of the suicide of one of the persons noted in the petition presented to the Council by Halden. Berinson said people did not commit suicide for one reason only.”

3.6.7 After the death of Penny Easton, the Foss Committee was set up with the Terms of Reference set out in para 2.4.1.

3.6.8 On 10 November, Dr Lawrence, Berinson and Kay Hallahan were asked questions in Parliament about their prior knowledge of the petition and answers were given.

3.6.9 Later that day, Russell, Willoughby and Kovacs discussed amongst themselves the possibility that they would be asked questions by the Foss Committee about their prior knowledge of the petition and that of the Premier. Russell said that he was going to write a “cheeky letter” disputing the right of the Committee to call him. Willoughby said, as an aside, that as he had a British Passport, the Committee would have no jurisdiction or authority over him.

3.6.10 The three persons then went to see Dr Lawrence in her office at Parliament House. They told her that they were concerned about giving evidence before the Foss Committee because they would need to disclose that she had been briefed in advance about the Easton allegations. One of the three particularly alluded to a meeting between Dr Lawrence and Halden on the subject. Dr Lawrence was “non-committal”. It is not clear what, if anything, she said. In effect Kovacs was met with silence when he told her what he believed he would feel compelled to say. Russell raised the possibility that they could refuse to answer questions by the Committee on the basis of the Australian Journalists’ Association Code of Ethics. Kovacs and Willoughby disagreed.

3.6.11 Kovacs later told Estelle Blackburn (a former press secretary to Dr Lawrence) that Dr Lawrence gave a “cold blank stare” which was “dismissive”.

3.6.12 Russell gave a radically different version of the conversation which I do not accept.

3.6.13 The final report of the Foss Committee was tabled on 22 June 1993. On 24 January 1995, Easton was arrested and spent seven days in Casuarina prison for failure to obey a direction of the Legislative Council to apologise to Margaret McAuley and the parents of Penny Easton.

3.6.14 On 22 December 1992, Dr Lawrence said on radio that “it [the petition] was certainly something that happened without my knowledge”.

3.6.15 In April 1995, Wilson, a member of Dr Lawrence’s Cabinet in November 1992, told McGeough, then with *The Sydney Morning Herald*, that the Easton matter was raised at a Cabinet meeting prior to the tabling of the petition.

3.6.16 On 18 April 1995 just before Dr Lawrence addressed the National Press Club on that day, another Minister in Dr Lawrence’s Cabinet, Pamela Beggs, made a statement supportive of Wilson.

## **Chapter 4**

### **4. REASONS FOR FINDINGS AND CREDIBILITY OF WITNESSES**

#### **4.1 Introduction**

4.1.1 There is a difference between an untruthful and an unreliable witness. A witness may not be prepared to tell the truth. More often, however, a witness is honest but unable to give a full or coherent or accurate account of events. It may result from genuine inability to remember, from poor ability with language or from pathology.

4.1.2 A tribunal of fact, which this Commission was, must discern as best it can the essence of what may be distilled from the witnesses it finds honest, notwithstanding the existence, as invariably there is, of imperfect memory and loose use of language.

4.1.3 Counsel for interested parties submitted in fine detail that there were such discrepancies in the accounts of the fourteen witnesses (to whom I shall refer below) who contradict Dr Lawrence's version, that no finding adverse to Dr Lawrence or Halden or, for that matter, anyone else, should be made.

4.1.4 It is rare that absolutely everything which a witness says is untruthful or unreliable. Untruthfulness or unreliability is more likely where evidence involves the self interest of the witness.

4.1.5 A remarkable feature of the evidence of the fourteen witnesses was that none had an interest in falsifying the essential thrust of what he or she said. Each suffered memory defects which were most marked in matters of detail.

Their reliability on peripheral matters such as dates, times of day and precise content of conversations was undoubtedly reduced. The limits of capacity of human beings to remember past events and conversations always dog court cases and inquiries of the present kind.

4.1.6 On the other hand, human recall is most reliable in respect of the core of an event which a person has reason to remember, either because it was so dramatic in impact or because a memorable occasion or another memorable event was associated with it or because it was unique. The existence of these latter features explains the recall of the fourteen witnesses of the core of their part in events in late 1992.

4.1.7 The widely publicised petition followed by the equally publicised suicide and the controversy about them which has raged since that time provide highly persuasive reasons why Cabinet members, for example, would be expected to remember whether the petition was discussed by Dr Lawrence before it was tabled. There is particular reason why they should remember whether the discussion was before the petition was tabled, not only because of the suicide but because of the public denials of Dr Lawrence about the state of her knowledge and participation.

4.1.8 The core was that she raised the matter at the Cabinet meeting and that criticism ensued. It could not be expected that the hour of day, the precise content of what was said, who said it and the precise number and identity of all those who were present would be remembered in the same way. Different recollections are to be expected and certainly exist in those areas. The differences found the attack on the credibility of the witnesses. This attack, in my opinion, is ill founded. It is, not surprisingly, part of the stock in trade of lawyers to rely on

discrepancies in this way as it is also to allege fabrication where witnesses purport to have identical recall.

4.1.9        The same observations apply to the evidence of non Cabinet members such as Imms, Sullivan, Marcelle Anderson, Kovacs, Willoughby and Estelle Blackburn. They had reason to be reminded of the subject matter of their evidence. Each witness recalled involvement of Dr Lawrence contrary to that which she has asserted publicly to have been the case since or shortly after the time of the events.

## **4.2        The Credibility, Knowledge and Role of the former Premier**

4.2.1        The media coverage of the public hearings of the Commission was dominated by the issue whether Dr Lawrence had knowledge of, and involvement in, the events and circumstances preceding the presentation of the petition.

4.2.2        Dr Lawrence denied that she knew anything about the contents of the petition before the morning of 5 November 1992 and denied any participation or involvement in the support given by her staff, or in the advice and course suggested to Easton, or about the arrangements for the publicity for the allegations which came to be embodied in the petition.

4.2.3        Generally speaking, it is the weight of the evidence in contradiction of Dr Lawrence's version that requires its disbelief.

4.2.4 There was, however, other evidence which strongly undermined the credibility of Dr Lawrence. It did not depend on belief or disbelief of another witness, but solely on what she herself said.

4.2.5 On 10 April 1995, Dr Lawrence was asked in a "doorstop" interview about her response to the statement of Wilson about the discussion at the 2 November Cabinet meeting. Dr Lawrence said:

"Well, I have talked with other staff and other members to just - to check my own recollection of these matters and quite clearly the conversation that was held was held after the event."

At that time only Wilson had revealed what took place at Cabinet.

4.2.6 The existence of any such discussion after 5 November in Cabinet or Caucus or elsewhere was extensively explored by counsel for Dr Lawrence. The only group discussion which was identified - the speech by Berinson in caucus on 10 November - had nothing in common with the 2 November discussion in Cabinet.

4.2.7 At the time that Dr Lawrence committed herself to the later discussion thesis it stood a good chance of nullifying the assertion, which then stood alone, of Wilson. There was then only his statement and hers (followed shortly by that of Pamela Beggs). The concession that such a discussion took place but not at the time that Wilson said, left open the distinct chance that it was a simple matter of difference in memory of dates and times. The public was likely to reserve its judgment.

4.2.8 In evidence, Dr Lawrence said that the discussion to which she referred in the doorstop interview was "regret about tabling the petition". Then she said that there were "discussions" (in the plural). She could not recall who

expressed the “regret” or “concern” about using a Family Court matter but she could not put a name or voice to the particular “parts of the argument” nor could she place the discussion in Cabinet or Caucus. She said: “I have a broad recollection that the issues were raised”. She did not believe that she spoke nor could she recall how long the discussion was. She said that she did not “have a recollection of specific details or timing”.

4.2.9 Dr Lawrence clearly fabricated the later discussion thesis as a device for nullifying Wilson’s contention without accusing him of lying, which was potentially damaging politically. Wilson commanded a degree of respect. She gambled against the emergence of evidence which put paid to the suggestion that the same conversation occurred after the petition was tabled.

4.2.10 Dr Lawrence even more clearly told an untruth to the Press Club at Canberra on 19 April 1995 when she said that she knew on Wednesday, 4 November that she would be exonerated in regard to the imprest account:

“.... I clearly want to debunk the claim that I seized on this petition as a way to deflect attention from a police inquiry into my imprest account. The fact is that by the day before the tabling of the petition I was already aware that the inquiry was completed and that I would be exonerated and I checked that detail with the lawyer involved yesterday.”

4.2.11 On the day before the tabling of the petition Dr Lawrence could not have been ‘already aware’ that she would be exonerated because the decision not to charge her was not made by the Police Commissioner until the day following the tabling. The steps involved before that decision was made are detailed in paras. 3.4.8 and 3.4.9. Neither McKechnie, on whose opinion the Police Commissioner relied, nor any of his staff told anyone his opinion. The “lawyer involved” was Christopher Humphry who himself did not know what McKechnie’s decision was until after the tabling. He could not therefore have told Dr Lawrence

what it was on the day before. When evidence by Humphry on the topic was sought to be elicited, Dr Lawrence, by her counsel, claimed professional privilege. What she said to the Press Club was untrue.

4.2.12           The outcome of the issue about her pre-tabling knowledge of the Easton allegations was put beyond doubt by the evidence of what took place on the occasion of a Cabinet meeting on Monday, 2 November 1992.

4.2.13           There were 16 persons who might have been present. The Premier was one, the Secretary Kobelke another and 14 members of Cabinet. Eight of these persons testified that Dr Lawrence initiated discussion about the sponsoring of the Easton allegations. These eight were unanimous that it was Dr Lawrence who raised the matter.

4.2.14           Dr Lawrence denied that she initiated any such discussion and denied that the discussion took place at all. She baulked at saying that the eight persons fabricated their version of the events and on occasions has spoken in public of there being merely a difference in recollections.

4.2.15           Difference in recollection implies, without expressly saying it, that if the discussion took place she has forgotten what others remember. Even if this unlikely explanation were accepted it would mean that she did know and took part in the decision to participate in the proposed activity but has forgotten about it. It would also mean that she had some responsibility for the support of Easton and the publicisation of his allegations outside Parliament, also the encouragement of Easton to petition.

4.2.16           In truth, the different recollection thesis cannot stand.

4.2.17 Dr Lawrence could not possibly have forgotten the pre-5 November discussions and briefing which were revealed by Kovacs, Willoughby, Marcelle Anderson, Kobelke and the members of Cabinet. Their evidence demonstrates that there were at least four occasions on which she participated in discussion about the Easton allegations. Moreover, she had occasion to be reminded of what she had said and done prior to 5 November as early as four days later when Penny Easton committed suicide and when on the following day, 10 November, she spoke on the topic of her briefing in Parliament and discussed it in the afternoon with Kovacs, Willoughby and Russell.

4.2.18 Since that time she has had occasion many times to recall what occurred when questioned by the media. It was first done on 23 December 1992 on Radio 6PR.

4.2.19 The weight of the evidence that Dr Lawrence was well briefed before 5 November may be shortly recounted.

4.2.20 Kovacs, Willoughby, Imms, Sullivan, Estelle Blackburn, Marcelle Anderson, seven Cabinet members and Kobelke support that the briefings took place. It means that 14 persons, all of whom supported Dr Lawrence's government and/or worked for it, contradict her claimed non-involvement and unawareness. Only one of those 14 witnesses needs to be believed to confirm the truth of the contradiction. The chance that each of these 14 persons fabricated their evidence is so remote as to be non-existent.

4.2.21 The initiation of the discussion in Cabinet by Dr Lawrence meant that she had been briefed by someone before the meeting on 2 November. This necessary conclusion tends to support the evidence of Kovacs and Willoughby that it was done by Halden and/or themselves.

4.2.22 Dr Lawrence said inside and outside the Commission on more than one occasion that she was supported by the evidence of the members of Cabinet who said that they did not recall the discussion. Although it is true that their evidence is capable of being interpreted as denying that the discussion took place at all, they did not say so and there are other interpretations. The conclusion that the discussion did not take place at all would mean rejection of the evidence of 14 witnesses on the basis that the thrust of it was a figment of their imagination or a result of a conspiracy of some kind despite there being no motive for it.

4.2.23 There were, apart from Dr Lawrence, seven Cabinet members who did not support the evidence of the eight persons referred to in para 4.2.13. Of these seven Smith refused to answer the vital questions. There was other evidence that he was present and took part in the subject discussion. Another Cabinet member, Edwards, was not present at the Cabinet meeting at all but he gave some support to the eight by his evidence that he was told on the Tuesday or Wednesday about the petition by other Cabinet members. A third member, Bridge, was very likely absent at the time that the Easton matter was discussed. He left early as the records verify. The discussion almost certainly took place after he had left. Hill also said that he left before discussion of the informal agenda and the records note his intention to leave at 1.00pm. The remaining three said that they did not remember the discussion although Henderson said that she would have remembered it if it took place when she was present. Each conceded the possibility he or she was not present when the subject was raised.

4.2.24 It goes without saying that each of the persons eligible to be present at the meeting at which Dr Lawrence spoke on 2 November was a supporter of her government and might be expected to be reluctant to give evidence damaging to Dr Lawrence and the political party to which they are or

were committed. Memory loss is a familiar enough refuge of those who do not want to say what they know. It is possible that a person has forgotten a discussion in which he or she had little interest. Hill professed a particular disinterest in the kind of exercise under discussion.

4.2.25 It is unnecessary to express a conclusion about the genuineness or otherwise of the forgetfulness to which one or more of the witnesses deposed or whether each such witness was indeed present at the critical time.

#### **4.3 The issue as to the chronology of events and its relation to credibility of Kovacs and Willoughby**

4.3.1 Substantial evidence was taken up with the “dates issue”.

4.3.2 Kovacs said that Halden came to see him on 20, or possibly 21, October 1992 after he had made an appointment by telephone to see him about “something that had come up in the Western Women Committee” (to which I have referred and shall refer as the Pike Committee). Kovacs did not have an independent memory of the dates but had a memory that it was at the time that he had received telephone calls from Halden on two successive days which he diarised. His diary entries for 19 and 20 October are respectively ‘Halden-Committee’ and ‘Halden’ plus his telephone number.

4.3.3 The thrust of Halden’s contention was that he did not know of Easton’s allegation until after 21 October so that Kovacs must have been wrong about the dates and this cast doubt about the reliability of the rest of his account.

4.3.4 Halden's evidence pivoted on his assertion about the time he obtained the knowledge. Halden said that Easton's copy letter 12 October sent to Pike did not itself refer to the allegation against Richard Court and that he did not learn of it until he received by fax a copy of the Explanatory Statement. Halden said that he did not receive that document until Monday, 26 October, and that he did not meet Easton until the next day, 27 October, after which, for the first time, he saw Kovacs, Russell and Willoughby.

4.3.5 Even if I were to accept Halden's chronology, which I do not, it could not alter the essential conclusions in this report. If Kovacs is wrong about the dates it does not follow that the thrust of his evidence is false or unreliable. Moreover, the evidence of Cabinet members, if accepted, means that the former Premier had been briefed before 2 November and briefed almost certainly by Halden or her staff or both.

4.3.6 Although Kovacs was manifestly a truthful witness and Halden, for reasons I give later, was not, it is rewarding to examine the dates issue. Assessment of credibility has a strong element of individual judgment which may not be universally shared. The existence of surrounding facts and circumstances which point to probabilities greatly assists the truth finding process.

4.3.7 Halden admitted that on 8 August 1995 (before he gave evidence) he said over *Radio 6WF* that he had “clear documentary evidence to refute (sic) and refute what has already been said”. His reference was to the evidence, in particular, of Kovacs and Willoughby which at that time had been widely publicised but given before either was cross-examined. Their cross-examination was delayed at the request of counsel for Dr Lawrence pending application for court injunction.

4.3.8 The Commission served a summons on Halden to produce the documents to which he referred on air. On 15 August he purported to do so.

4.3.9 He did not produce any document which fulfilled the expectation which he had generated. Only one document gave some support to the chronology for which he contended but it depended for its cogency entirely on what Halden said about the first time when he knew of Easton’s allegation against Richard Court. The document was the letter addressed to Easton dated 21 October 1992 from Hilditch informing Easton that he would (that is, in the future) distribute the copy 12 October 1992 letter from Easton to the Public Service Commissioner. This meant, Halden said, that he could not have known of the allegations against Richard Court until after 21 October and, by inference, he would have no reason therefore to make the appointment before then to see Kovacs about that allegation, as Kovacs said that he had.

4.3.10 It is true that the 12 October 1992 letter did not mention Richard Court. It referred to the Explanatory Statement which was not annexed but which did contain the allegation against him.

4.3.11 The Hilditch letter to Easton did not establish when Halden first knew about the Richard Court allegation.

4.3.12 Halden also gave an interview to a reporter from *The Bulletin* magazine prior to his evidence before the Commission. The interview was published in the edition dated 5 September 1985 and contained Halden's chronology to refute the evidence of Kovacs and Willoughby.

4.3.13 In his evidence, he stated that there was another Hilditch letter which supported his chronology but which was in the hands of Marquet and "privileged". This latter Hilditch letter was not sought from Marquet in the circumstances but at the conclusion of his evidence Marquet volunteered its production.

4.3.14 The second Hilditch letter, dated 10 November 1992, was written in response to a request from the Chairman of the Pike Committee. He was asked to provide the date on which he distributed the 12 October letter from Easton. In a postscript Hilditch wrote that he had "forwarded it" on 21 October. Hilditch almost certainly distributed it by hand on that very day when there was a meeting of the Committee. Hilditch said that it was his practice to do that with correspondence or submissions received prior to such a meeting. Unfortunately, he had no independent recollection of what he did. He was able to say by reference to records that he received the Easton letter on 14 October but was unable to recall making any actual distribution or how or when he made it.

4.3.15 No document establishes the date on which Halden first knew of the Easton allegation against Richard Court. That knowledge was not necessarily gained from the Explanatory Statement faxed by Easton to Halden.

4.3.16 I repeat that Patricia Adams, a temporary, was the only employee in Halden's electoral office during the week 19-23 October 1992. Her superior Joanne Whalley was on leave. During that week, on a day which she could not

remember, Adams received a telephone call from Easton in which he said that he had a document which contained information about Richard Court having done "something improper". She said that she wrote down the message on a piece of paper which she no longer has. The paper has not been produced. She almost certainly conveyed that message to Halden on the same day although Halden denied any recollection of having received it. There are two reasons for thinking that he did receive it. One is that Patricia Adams sent a fax to Easton dated 23 October requesting a return fax of "THAT DOCUMENT". The other is that, in it, she asked Easton to fax the document to the Parliamentary office of Berinson. Patricia Adams was an inexperienced voluntary worker who would not, without being told by Halden who was the only person likely to have done so, have known of the existence of a fax machine in the office of Berinson or, if she had known, that it was a fax machine to which the document might properly be sent and also known its number.

4.3.17 It was the practice that incoming telephone calls, such as that made by Easton, were recorded in a telephone message book. Although this book, still only about one-third full, was in the office of Halden as at March 1994 when Joanne Whalley left, it was not produced. Halden said that he caused extensive search to be made for it but it is not available. Its predecessor which contained a record of messages for 1991 was, however, found and produced. The missing message book might have been capable of establishing the date on which Easton telephoned and spoke to Adams and thus the date on which the allegation against Richard Court is likely to have first become known or signalled to Halden.

4.3.18 The date (23 October) of the fax for 'THAT DOCUMENT' makes it virtually certain that the telephone call of Easton (taken by Adams) was in the week ending 23 October. It may have been on that day but having regard to the detail of the fax message evidencing, as it did, knowledge of the importance of the

Explanatory Statement, knowledge of Easton's fax number and of the number and availability of Berinson's fax machine, there is a significant chance that there was more than one telephone conversation between Easton and the Halden office in that week. Kovacs said that Halden told him at their first meeting that he himself had "spoken to Mr Easton" and "seen a letter that Mr Easton had written to the Pike Committee" (T/s 3188).

4.3.19 Thus the dates of conversations between Easton and Adams and between Easton and Halden, about which I have not seen any written record either as to date or content, rather than the date of circulation of the 12 October 1992 letter to the Pike Committee, would have given the best clues as to the date of the first visit of Halden to Kovacs at the offices of Dr Lawrence relating to the Easton allegations.

4.3.20 Of course, the chance that Halden previously had knowledge of the Easton allegation from other sources cannot be disregarded.

4.3.21 As early as Christmas 1989, rumour of the investigation of Richard Court by the police on reference from the OCC was repeated by a guest at a social function to Richard Court himself. Whatever was said to him caused Court to telephone David Orr at the OCC. Although he received no information from Orr, Court was interviewed by the police early in January 1990. Easton had shown his Explanatory Statement dated 24 November 1989 to the Public Service Commissioner in 1990 and had written to him about it on 25 June 1991 and 12 October 1992.

4.3.22 Easton also personally told the police what he wanted to say about Richard Court. Other witnesses said that they were aware generally of

Easton's allegations (not necessarily involving Richard Court) over a period before

4.3.23            In October 1992 a member of the staff of a then Cabinet member, information which bore on Richard Court to his disadvantage arising from a family law action in which he had been involved". Pearce thought that the call was one, Cabinet.

4.3.24            "And you would know, would you not from what has happened subsequently, if not before, that Mr Easton had a grievance which he was years? That's so, is it not?

Parry:

4.3.25            There is no evidence that knowledge or rumour of the Easton having regard to the number of people to whom they had been published, there is a substantial chance that he had some knowledge of them by that time.

The accuracy of Kovacs' memory as to the date of the first meeting with Halden on the Easton matter and his interpretation of his diary entries

actually took place. Halden said that there was such a conversation but not until 27 October.

4.3.27 If there is doubt, however, about the dates given by Kovacs there is similarly a doubt about those provided by Halden. The date and content of the Adams fax to Easton on 23 October were not satisfactorily explained by Halden, who claimed that he did not receive the Explanatory Statement until Monday 26 October and that he could not explain why his staff had asked for 'THAT DOCUMENT' in the fax of 23 October.

4.3.28 Furthermore, documents were once in existence which could have established some, if not all, relevant dates. I have already referred to the telephone message book which might reasonably be expected to have contained the date of Easton's telephone conversation with Adams. The Explanatory Statement which Easton faxed to Berinson's office, with no doubt a date imprint on it, is also missing. So also are the draft petitions faxed between Marquet and Easton which likewise might be expected to have had date imprints.

4.3.29 A fax which Easton thought, so he said, had come from Ray does not assist confidence in a conclusion that the absence of supporting documents has been acceptably explained.

4.3.30 This fax was received by Easton after 10 November in contemplation of the hearing before the Foss Committee in late November 1992. Only a faded copy of that fax remains. There is no date on it. The following words only, directed to Easton, can be discerned :

'When you went to see Laurie with John you had some idea as to what you wanted to do/say. You took some handwritten notes and John Halden suggested that you should petition the parliament. You had left your notes with Laurie and once Laurie had drafted the petition you met with him again and suggested some amendments to the petition.'

handwritten notes as these were no longer of any use to you.'

4.3.31

and he did not obey it. His hand-written notes are in evidence.

4.3.32

denied that he sent it. The evidence is insufficient to enable me to find that Ray was the author, particularly in the light of the applicable standard of proof. The

regard is had to its terms and to circumstances which obtained at the time. The fax demonstrates a propensity to have "inconvenient" documents cease to exist and to

contain a reference to the actual evidence given by Penny Easton and Margaret McAuley in the Family Court, namely, that Easton \_\_\_\_\_ what he would receive, not that he would receive the money. Nor did the evidence contain an

being a condition of engagement.

4.3.33

suggests the non-reliability of the chronology espoused by Halden. It throws doubt also, in one respect, on Marquet's recall of the dates. The document is the diary of

was on 26 October, a date which Halden firmly denied to have been the one on which he made it and which is seriously at odds with his account of the sequence

that Halden telephoned him on that day (Monday, 26 October) to make his one and only enquiry about the state of the investigation of the Easton allegation against

4.3.34 Marquet said that Halden saw him at the end of the week beginning 19 October. He thought that it was Friday 23 October. Kovacs said that Halden went to Marquet after they first met. Marquet's evidence contradicts that of Halden who said that he did not speak to Marquet about the Easton matter before Tuesday 27 October.

4.3.35 There is other evidence which goes to support, although not conclusively, the Kovacs chronology.

4.3.36 On the day following the presentation of the petition on 6 November Halden said on ABC radio to Peter Kennedy when asked how long had he been "working on this issue":

"Peter, as I recall, Mr Easton approached me about two and a half weeks ago, .... its been about two and a half weeks."

"About two and a half weeks" before 6 November was about 19 or 20 October.

4.3.37 Parry, with *Channel 7*, was told by a person, whom he refused to name, about the Richard Court allegation. He could not say precisely when he was told but said that it was possibly in the week prior to the tabling of the petition or the week before, that is, the week 19-23 October. The tip must have come from within the Halden camp or from the staff of the Premier.

4.3.38 Matheson, who relied only on his memory, said that Halden enquired from him some two weeks before 5 November about the minutes of Exim board meetings and whether access to them had been given to any person such as Richard Court. Matheson impressed as independent and honest. Of course, his memory, like that of other witnesses, must be regarded as fallible. However, it was persuasive that the enquiry made by Halden was at a time consistent with the

chronology provided by Kovacs. Matheson said that he thought that the enquiry had been made a fortnight prior to the tabling of the petition because he had to

week. He said that it was a week before he was telephoned by Ray (who, in evidence, denied that he had done so) to check the response and that he himself

4.3.39 Halden told the Commission that until recently he believed that the

view after discussion with Marquet who told him that it was actually signed on 4 November. On 7 January 1993 (only two months after the event) Halden replied to

petition being signed on 4 November:

“.... my recollection is that it was actually signed on the Friday”(30

4.3.40 Halden did not explain the facts and circumstances which led him

significance is considerable.

4.3.41

meeting took place with Dr Lawrence and at which Halden, producing a document, told her that “it has been fixed”. There is a reasonable likelihood that a draft

them back and forth to Easton over days, the precise dates of which he could not confidently recall. Marquet’s evidence of his uncertainty about dates is at T/s & ff. It is a short step to the conclusion that Halden believed that a draft petition, which he may well have had in his possession and which Kovacs thought that he

did have, was a draft of the petition which Halden at that stage thought that Easton had signed.

4.3.42 I accept that the petition which was presented, had been signed, as Marquet said, on 4 November. It is the only evidence of the signing date. There were drafts prior to that time but none has been produced. They were faxed to and from Easton. Date imprints, as I have said, might have assisted resolution of this issue on which so much reliance was placed by Halden.

4.3.43 It also appears that Halden provided a statement of his version of events to solicitors acting for him and Dr Lawrence in the Supreme Court proceeding at a time before the evidence of Kovacs had been given (and therefore prior to any publicity of Kovacs' description of the Friday 30 October meeting). That statement was capable of rebutting the suggestion that Halden had tailored his evidence to combat the evidence of Kovacs, that is, to rebut the suggestion of recent invention. His statement was called for but not produced on the ground of professional privilege. He could, if he had wished, have waived privilege. So also could Dr Lawrence, on whose behalf a claim of privilege similarly was made on the ground that there was a joint interest to protect. In the upshot, the statement is not in evidence.

4.3.44 The absence of confirming records necessarily generates a transcending doubt as to the accuracy of dates of particular events. It must be observed, however, that Kovacs was not shown to have had any motive whatever for placing the events in the sequence that he did. His diary entries are partly confirmatory of his chronology. On the other hand, Halden had a very strong motive, namely, the contradiction of the evidence of Kovacs and his personal political agenda, for his version.

## **The credibility of Halden, Kovacs, Willoughby, Russell and Easton**

### **(a)      *Halden***

#### **4.4.1                  den's Statements outside Parliament**

to the media after the presentation of the petition demonstrate not only his glittering presentation was embarrassment of Richard Court for political advantage.

These are some, at least, of those statements:

"Outside the Council, Mr Halden warned that if a committee was not to support his allegations". ("Court keeps up the fight - but party worries" - *The West Australian* McGeough, Meertens and Callander).

time he had read, at best only cursorily, some of the documents given by criminal offences.

"It is easy to say this is a political stunt but the facts are there. I checked (Quoted in above article 6 November 1992.)

Parliament. Halden had made no checks which established the facts by way of verification. He did not have them checked, as he said, by the

to the police which did not verify any of the allegations made to him by Easton.

Halden did not say what facts “are there” or where they were. He was speaking colloquially to be taken to mean that the allegations are, or were, supported by facts. In context, the statement had a special sting. Halden meant and no doubt conveyed that the “facts” which were “there” supported offences having been committed by the persons named in the petition. I refer to Chapter 5. This could not with propriety have been said.

(3) Kennedy Interview - ABC Friday 6 November 1992:

“Kennedy: What checks did you do to satisfy yourself that there was a factual basis to the whole issue?

Halden: Well first of all, I mean there’s a complication that the Family Court is involved in this matter, so I was particularly careful and particularly cautious. I spoke with Mr Easton then inspected the documents that he had, then he and I visited the Clerk of the Legislative Council and went through all of the documents and discussed the issue of a petition of last resort. Having done that I then made bureaucratic checks as to the confidentiality of Exim minutes and of Goldrock minutes and established that they were confidential and that at no time to those organisations’ knowledge had anyone received copies of those minutes in a lawful way.”

Halden had not made the checks claimed. He was neither careful nor cautious. He had not established that the minutes were “confidential” nor that at “no time had anyone received copies of the minutes in a lawful way”. Withers, for example, had clearly received the minutes in a lawful way. Halden made no check as to whether Withers lawfully had given minutes to Richard Court, which Withers clearly had done.

Halden had not been “particularly careful”. His perusal of the documents was cursory and his “bureaucratic checks” comprised the call to Matheson

which was inconclusive and the call to David Orr which did not yield any

- (4) "The only people who knew of this petition (pause) and its substance prior  
(Interview Kieran Murphy 6 November 1992, outside Parliament House

Halden in evidence conceded that Kovacs, Russell, Willoughby, Ray and Berinson (Wednesday evening), in fact, knew. In addition, although he did

Lawrence and on another occasion in the presence of Ross Love who, therefore, also knew of the petition.

Telephone interview between Martin Saxon (Journalist) and Halden, 7 January 1993:

You spoke to the Premier?

Halden:

....

Saxon:

Halden: I'm not quite sure when. Around about that

.....

Saxon:

mentioned?

Halden:

Saxon: What does 'not in any great way' mean?

To the best of my recollection that did not come up at all."

Halden in evidence said he spoke to Dr Lawrence on the Thursday morning. He and Dr Lawrence each said in evidence that Richard Court and Easton were mentioned by name on that occasion.

- (6) 5 November 1992, *ABW2* on 7 o'clock News:

"If it is true, what is below the belt is that the Leader of the Opposition has breached the Official Corruption Act."

Halden could only have been taken to mean that if Richard Court did give "confidential documents" to Penny Easton he committed a breach of the Official Corruption Act. This was not true. The Act created no such offence nor an offence of any relevant kind. Nor did the Criminal Code. I refer to Chapter 5. The expression "confidential documents" is an incorrect, certainly inappropriate, description of a document which is alleged to contain information capable of legal protection against misuse.

- (7) It is my belief that the Leader of the Opposition should stand aside" (the same interview, 5 November 1992, *ABW2*).

Halden's statement of belief gave weight to the implication that "if true" the Leader of the Opposition had committed an offence.

- (8) Interview with Les Thompson on *6PR* radio, 5 November 1992:

"Well, first of all you have to establish when Mr Court alleges that he actually put the documents into the public record. Now, up until, as I recall, 1987, Exim was not a statutory authority but a limited liability company and therefore the Board minutes would have been confidential under corporate affairs law."

There was no provision in the Companies (Western Australia) Code (which was the relevant law then in force) as stated by Halden.



(9) Same interview:

“Q. Haven’t the police already looked at this matter at some stage?

Halden: Yes, it has, it’s looked at both matters, the first matter in regards to a \$200,000 ex gratia payment, the police have exonerated Mr - er - Easton and in regard to the other matter I am advised by him that the police have not concluded their - er - investigations because one of the key witnesses was overseas at the time of the investigation so in effect I guess the matter sat stood *sine die*.”

If Halden had made the checks that he claimed to have made, he would have learned that the police had concluded their investigations in respect of both allegations and exonerated the persons mentioned in the petition.

(10) The Sattler File 6PR Friday, 6 November 1992:

“Sattler: And has that investigation concluded and have the police cleared Mr Court?

Halden: Er no. ....”

The investigation had been concluded. Halden said he had made checks.

If he had made checks he would have known that it had been concluded.

(11) “Sattler: So Mr Court, as far as you are aware, is still subject to a police investigation?

Halden: That is my understanding, yes.”

See above comment.

(12) Same interview:

“Sattler: So technically at least Mr Court can remain the Leader and remain in Parliament?

Halden: Oh, look, exactly. The issues are - er - but if the allegations which as I said to the press and have been very clear about - er - myself and the Clerk of the Legislative Council have gone over the facts and substantiated the facts in regards to these allegations - um - if these allegations are subsequently found to be true, then Mr Court should, of course, resign but they are of a grave nature and my suggestion is today and still is that Mr Court ought to stand aside whilst these matters are investigated."

Halden's claim to have substantiated the facts was untrue.

(13) Sattler (same interview):

"He (Court) and his colleagues say this is simply a smear campaign against him, what do you say?

Halden: Er well, what I am saying is the - er - the petition's facts will show that that is not the case."

This is a further adoption by Halden of the facts.

(14) Gerry Gannon ABC Friday, 6 November 1992 - Kennedy Show:

"Kennedy: Now, you said yesterday that Mrs Easton wasn't entitled to have those Exim or Goldrock minutes.

Halden: That's right, they're confidential."

I refer to my observations about confidentiality in Chapter 5. Halden's assertion was at best misleading. The law did not prohibit possession of the minutes by Penny Easton.

(15) At the same interview:

"Kennedy: So there's a lot more to come in this particular matter?

Halden: Well its my belief Peter, I mean there is significant information to come forward ...."

Halden did not have further information which advanced the allegations. The information which came forward after the interview was that the persons mentioned in the petition had been exonerated as a result of police investigation.

4.4.3 Halden's credibility, that is, whether Halden is believed, is not critical to all my conclusions because he was not at the Cabinet meeting on 2 November at which Dr Lawrence demonstrated that she had been previously briefed on at least the essential features of the Easton allegations, particularly those against Richard Court. Nor was he present at the meeting at which Marcelle Anderson, in the presence of Dr Lawrence, questioned the wisdom of supporting the intended course of events.

4.4.4 I reject Halden's claim that he did not brief Dr Lawrence before the morning of Thursday 5 November and his denial that he used Easton and his grievances for his own purposes. This requires me to make some observations about his credibility.

4.4.5 It is difficult to accept that Halden acknowledged his obligation to be truthful to the Commission above the agenda he set himself in the political arena. In that arena, he was the white knight to save the former Premier from the fallout of the evidence of Kovacs and Willoughby.

4.4.6 He denied that he briefed Dr Lawrence about the Easton allegations. The probabilities strongly favour his having done so and his having sought and received her approval.

4.4.7 Halden said that he went to the Premier's office after referral by the staff of another Minister as soon as he learnt the potential (as he thought it to

be) of the Easton allegation against Richard Court. I find that he made a telephone appointment with Kovacs as soon as he knew that Easton had a complaint about Richard Court. Halden wanted as much media coverage for it as he could get and advice about how to get it. The idea did not come from Easton, who at that stage did not know how his complaint was to be taken up by Halden or what was in store. The electoral circumstances of the government at that time and perhaps other considerations made it unlikely that Halden would take up the Easton allegation in the way that he did without the approval of Dr Lawrence. Success could hardly be achieved if she were to distance herself from the allegations as soon as they were publicised. In any event, it was unthinkable that she would not be forewarned so as to enable her to deal with questions.

4.4.8 I do not base my lack of confidence in Halden's reliability as a witness merely on his having made public statements critical of the Royal Commission or on his having published his evidence in advance. This was done by more than one witness. McGinty is an example. He is Leader of the Opposition and did not remain silent outside the Commission. In McGinty's case, the submission on his behalf to exclude his critical evidence on the ground of Cabinet confidentiality was rejected. In the result and with obvious reluctance McGinty gave evidence of what he knew to be true, notwithstanding that it went against the grain and had the potential to harm the interests of Dr Lawrence, whom he said he supported. The same may be said of McGinty's colleagues who for the main part were clearly remorseful about the events of early November 1992.

4.4.9 The same cannot be said for Halden. Halden has no remorse. He sees his conduct as fully justified, which may have an element of bravado for public consumption. He impressed, however, as a person who justified his conduct by reference to his perception of the conduct of his political opponents, without

stopping to consider what nevertheless might be the effect of what he said and did on the lives of people not involved in his political contests.

4.4.10 I have already mentioned Halden's public statements which demonstrate his predilection for carefree adjustment of facts. Halden's availability to the media to denigrate the Commission and to make running comments on the evidence left no question about his priorities. Inside and outside the hearings, he appealed to a wider audience.

4.4.11 In the result, it was insurmountably difficult to regard Halden inside the Commission as more reliable than he was outside it where blatantly he did what suited him with the truth.

4.4.12 No tribunal of fact, in the circumstances, acting in good faith could reasonably be expected to prefer his evidence to that of Kovacs and Willoughby about the briefing which they said that they and Halden gave to Dr Lawrence.

**(b) *Kovacs and Willoughby***

4.4.13 In addition to my observations about Halden and his reliability as a witness, there are objective reasons why the evidence of Kovacs and Willoughby on the critical question of Dr Lawrence's participation must be accepted. Kovacs and Willoughby were staff members of Dr Lawrence dedicated to her service. Each was a reluctant witness. No motive for fabricating this vital part of their evidence was ever elicited or suggested in either case.

4.4.14 Some doubt was cast on the accuracy of their recollection as to dates and some inconsistencies on peripheral details were highlighted. They both

expressed no independent memory of the dates. The dates in themselves do not matter save to the extent that they bear on general reliability. The occurrence of briefings of Dr Lawrence prior to 5 November is pivotal. In this regard neither Kovacs nor Willoughby were in doubt that they took place.

4.4.15 Moreover, the version of Kovacs did not stand alone. The evidence of Estelle Blackburn, in whom Kovacs confided his version of events in late 1992 or early 1993 or both, supported the existence of the deep remorse of Kovacs for his having been involved, a remorse which he is not likely to have had if the substance of his evidence is untrue. The evidence of Estelle Blackburn is supportive of Kovacs as a matter of ordinary logic.

4.4.16 Kovacs was deeply affected by what occurred and had difficulty in giving public expression to what he knew. No real assault was made on his honesty as a witness and in my opinion his integrity is not in question.

4.4.17 Willoughby gave an account which differed in detail from that of Kovacs in a number of respects. He repeated many times that he had no memory for dates but there is no doubt that he tried to recount truthfully what he was able to recall.

4.4.18 It is likely that Willoughby's memory of the order in which events occurred is flawed. Nevertheless, every confidence can be placed in his evidence that he was present at briefings of Dr Lawrence by Halden. It is because he had no motive to fabricate it and every motive to deny it.

4.4.19 Kovacs and Willoughby each risked being cast adrift from their long standing associations as a result of the evidence which they gave.

4.4.20 It is not possible to conclude that they invented what they said, it being so likely to damage many of their past relationships and so unlikely to yield any advantage.

**(c) Russell**

4.4.21 Russell was the director of Parliamentary Services in Dr Lawrence's office in October/November 1992. Dr Lawrence is now Minister for Health in the Federal Government holding a very important post. Russell is her senior adviser.

4.4.22 He was capable of giving very damaging evidence with possible lethal effect on Dr Lawrence's political career. He was directly involved from an early time in the events preceding the tabling of the petition and worked closely with Kovacs and Willoughby. They said that Russell took part in more than one briefing of the former Premier. Marcelle Anderson said that it was Russell who explained the details of the petition to her in Dr Lawrence's presence.

4.4.23 He denied that any of the conversations involving Dr Lawrence occurred. His evidence was in direct conflict with that of the persons mentioned above and he gave a markedly different version of the discussion with Dr Lawrence on 10 November about the evidence which might come up before the Foss Committee.

4.4.24 I have found that the conversations denied by Russell took place.

4.4.25 It is difficult to envisage that Russell would, in the circumstances and climate of the Commission, have failed to support his present employer. He

was in a unique position in which the fate of his employment and his evidence was closely linked. He could scarcely have expected to maintain his position of senior adviser if his evidence had supported that of Kovacs and Willoughby.

(d) ***Easton***

4.4.26 Easton's contact with Halden following his 12 October letter to the Pike Committee sparked the chain of events leading to the petition.

4.4.27 There is little doubt that the letter was inspired by a single minded determination of Easton to pay back Margaret McAuley for her evidence to the Family Court. Easton claimed that it was inspired by his outrage at finding that a perjuror had been appointed to perform public duties. This claim in my opinion was spurious.

4.4.28 Easton knew, on the other hand, or must be taken to have known, that his chance of attracting the interest of politicians in his endeavours was slight. One reason clearly enough was that he had failed to do so in the past, another was that he had no objective proof of perjury, another that he had been disbelieved in the Family Court and yet another was that outsiders, whether politicians or not, are shy about becoming involved in family disputes.

4.4.29 This knowledge may also be inferred from at least the two instances, the telephone calls to the offices of Pearce and Halden, where he mentioned his allegations against Richard Court as bait to attract interest in his real target, Margaret McAuley. Only Halden took the bait.

4.4.30

for Halden's political purposes. There was good reason, as I say elsewhere, to think that he was. But also, he used Halden who came to the party on the Richard

4.4.31                    Easton

namely that the police had told him that there would be no prosecution of his former wife or any of her family, no prosecution of Richard Court and that their

ongoing.

4.4.32

adversely on his credit. The latter was again prominent in his evidence, particularly in his gratuitous reference to an alleged statement by his deceased

ruled that I would not entertain details of the dispute with Penny Easton, that the allegation of what she said to him could not be contradicted because she is dead,

relevant. I think that this episode in his evidence was very much to his discredit.

4.4.33

parties to establish Easton as a person with genuine grievances which were not without foundation. Vain attempts were made to solidify the foundations as they

4.4.34                    There is little doubt that Easton genuinely considered and  
of grievance.

4.4.35 In his post-petition media interviews Easton said that he was concerned to salvage his reputation. Presumably he meant that his reputation had been damaged by what had been said in the Family Court and which amounted to his being corrupt or the recipient of a corrupt payment. The evidence, however, in the Family Court had not been, because it could not have been, published outside the court by reason of s. 121 of the Family Law Act. Also, it had not been alleged there that he was corrupt or that the payment in question was a corrupt payment. Easton put that interpretation on the evidence. No one else did. Moreover, if his reputation was damaged by what was said, it was due to the publicity which he himself gave to what he claimed to have been said about him.

4.4.36 The evidence of Easton bore only peripherally on the principal matters referred to me for inquiry. In so far as my findings are inconsistent with his evidence, however, which in some respects they are, it is because I have preferred other evidence on the subject matter.

## **Chapter 5**

### **5. THE EASTON ALLEGATIONS**

#### **5.1 Introduction**

5.1.1 Easton had made his complaints to a number of people including the Chairman of the OCC, the Public Service Commissioner, the Police and members of Parliament over some three years before Halden took them up.

5.1.2 One reason why Easton had so many refusals was no doubt because his complaints and allegations were bound up with a family dispute in the Family Court, but another almost certainly concerned their emotive content and doubtful sustainability.

5.1.3 Halden's approach to Taylor, the Deputy Leader, his involvement of the Premier, the Premier's staff, the media and his adoption through the media of the allegations all point to his prime interest being personal and political. That inference is strengthened when regard is had to the grievances and allegations themselves and the way they were expressed. This scrutiny is required for two reasons; one is to show how that inference is supported, the other is to demonstrate the conflict between those personal interests of Halden (also of Dr Lawrence) and the interests of the parties (including those of Easton himself) to the matrimonial dispute and members of their families.

#### **5.2 The Allegations**

5.2.1        The two allegations which appeared in paragraph 2 of the petition were said (T/s 2100, 2101) to be those originally made to Halden and substantially those told to Dr Lawrence. They were adopted by Halden outside Parliament.

5.2.2        Paragraph 2 read :

“In the course of proceedings in the Family Court of Western Australia -

- (a)        the petitioner’s then wife and wife’s sister gave false evidence on oath alleging that the petitioner would receive \$200,000 additional to moneys that he was otherwise entitled to on his retirement;
- (b)        documentary evidence of a highly confidential nature was adduced by the petitioner’s then wife who testified that it had been obtained by her from Mr Richard Court MLA.”

The remaining paragraphs amplified each allegation.

5.2.3        It is convenient to deal with the allegations and what was inserted in the petition ostensibly in support of each.

### **5.3        The Perjury Allegation**

5.3.1        The petition did not use the word “perjury”. It spoke of “false evidence on oath”.

5.3.2        Section 124 of the Criminal Code defines perjury:

“Any person who .... knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime which is called perjury.

.....”        (My underlining).

Neither “knowingly” nor “material” appeared in the petition.

Easton used “perjury” when he spoke to Halden and Marquet that his wife and sister-in-law had committed “perjury” and the word appears in his Explanatory Statement. Marquet did not agree that the word appear in the petition.

Lawyers understand the technical distinction between “false evidence on oath” and perjury for the reason stated. Perjury is a criminal offence “False evidence” is a shorthand label of the criminal offence of “perjury” but the label does not contain all the ingredients of the latter. There can be little doubt that “perjury”.

### 5.3.5

mention was made by Halden or Easton, or anyone else, of the technical distinction.

The evidence given by Penny Easton and her sister in the Family Court, the subject matter of the possible crime of perjury, was misstated in the

5.3.7           The petition was expressed to allege that these witnesses against moneys that he was otherwise entitled to on his retirement”. The actual evidence of Penny Easton was set out on p. 4 of the Explanatory Statement in the same form

"He (Easton) told me that he was to be employed as a 'sacrificial lamb' for the Labor Party and would at the expiration of his period of time receive a large payout for his duties. My husband told me he was going to receive \$200,000. He also told me that he was to terminate his employment well before the next election."

5.3.8        The evidence was merely about what Easton told Penny Easton. What the petition said was quite different. It was possibly less difficult to disprove the allegation which appeared in the petition than the allegation which was actually made, namely, that Easton said that he was to receive the payment.

5.3.9        Neither Halden nor Marquet was ever provided by Easton or by anyone else with "facts" which, if accepted, would supply the ingredients of perjury. They knew that the evidence of Penny Easton had been contradicted or denied by Easton but that he was disbelieved by the Family Court judge. They also knew that since the judgment, further affidavits were filed by members of Easton's first family in support of his denial together with affidavits that the money had not been nor was to be paid. They knew also that, by consent of Penny Easton, Easton had been relieved by the Family Court from the order which was assumed to have taken account of payment of the \$200,000. All this information was in the documents provided to them by Easton. These documents also demonstrated that Penny Easton and her relatives adhered to their version about what Easton had told them.

5.3.10       In the result, there was no more than allegation and counter allegation in relation to an unrecorded conversation at a social gathering about which almost certainly there could never be independent or objective proof or disproof. The evidence produced by Easton to the Family Court was from persons said to be present when one or more of the conversations allegedly occurred. Their denial of their occurrence could hardly be regarded as establishing perjury.

Apart from the difficulty of determining who was to be believed between two sets of non-independent witnesses, there would be even greater difficulty about accepting

witnesses. The occasions were in family settings. There is little likelihood that even over a dinner table (let alone elsewhere) every person present would hear

5.3.11            The issue as to the occurrence and content of the conversation

or for that matter the vast majority of witness cases in all courts and tribunals.

5.3.12

who was well familiar with the family dispute scene in the Family Court where previously he had been a counsellor, would have encouraged or advised or

be said about the support given by Dr Lawrence. The circumstances also made it remote in the extreme that redress by way of the establishment of perjury or the

was achievable by the process of petition which was urged upon Easton.

5.3.13

removed from the Pike Committee was not achievable if he could not sheet home his perjury allegation against her.

### **The Confidential Documents Allegation**

5.4.1

"Mr Easton's allegation is that Court as a Member of Parliament and

documents and, having obtained them, passed them to Mrs Easton, a person who had no public interest in them and did so in breach of his public duties and for some ulterior purpose.

It is this which this Commission refers for investigation."

5.4.2        The Explanatory Statement referred to items 22, 49 and 50 in the affidavit of discovery 28 August 1987 by Penny Easton. These documents were the Mormac cheque and the Directors' minutes of Exim and Goldrock. The petition refers only to Exim. Richard Court never had or passed on any Exim minutes and Easton had already been told that the reference to them in Penny Easton's affidavit of discovery was a mistake. Easton claimed not to believe the explanation so he persisted in the allegation. Clearly he added reference to the Goldrock minutes also as "confidential documents" when he spoke to Halden (as he had to Mr Wickham).

5.4.3        The law is clear enough about confidentiality in relation to documents. Halden could have found it out if he had wanted to know.

5.4.4        The description of a document as "confidential" is (as a rule) inappropriate. The law recognises that a document may contain "confidential" information which is capable of protection under the rules of equity and court practice.

5.4.5        The unauthorised use of such information, however, may find civil relief by a court but it does not constitute a crime. Civil relief is usually founded on equitable principles. Equity does not give relief to a plaintiff who does not come "with clean hands". Thus relief is not likely to be available where it is questionable conduct which is sought to be kept secret.

5.4.6            A court will also protect the confidentiality of information in trusts, and in others, the existence of confidential relationships (relationships *uberrimae fidei*

5.4.7            There are some offences under the Criminal Code which may no criminal offence which can be properly described as passing “confidential documents” in the circumstances set out in the petition or in those made known to

5.4.8            The mere fact that Richard Court was in possession of company “confidential documents” or documents which were “held to be, and treated, as strictly confidential”. It is true that documents containing minutes may be (but not confidential although it is for the corporation to say how freely accessible they might be. At the relevant time, a corporation was obliged to record and keep s. 253. By s. 12 an of inspect them.

5.4.9            “confidential”, depending on content. If it was confidential and a court considered that it was, or should be so treated as a matter of caution, it would not mean that or other court). The minutes could have been subpoenaed and inspected either on an undertaking as to confidentiality or as a result of a court direction that they be

information be not passed on elsewhere. In other words, Penny Easton could have subpoenaed all the documents under discussion (as indeed she subpoenaed and inspected documents of Exim). The confidentiality of any information in them would not have meant that she would have been stopped from seeing them or from tendering them to the court, if relevant.

5.4.10           In any event, the copy minutes, which were passed to Penny Easton, had been the subject of mention, to the knowledge of Halden, in Parliament in 1986.

5.4.11           But Easton did not allege to the chairman of the OCC or to Halden or to anyone else, facts and circumstances capable of constituting the ingredients of an offence referred to in s. 7 of the OCC Act or any other offence.

5.4.12           The petition alleged, and Halden adopted outside Parliament, that the investigation which the OCC referred to the Police was in respect of Richard Court having acted "contrary to s. 7(1)(a) of the Official Corruption Commission Act 1988".

5.4.13           A copy of the Act was in the material supplied by Easton to Halden and Marquet.

5.4.14           Halden said in evidence that he had looked at that section. If he had done so he would have understood clearly that it did not provide any offence at all. The OCC Act did not prescribe any relevant offence. Section 7(1)(a) merely empowered receipt and consideration of information with power to pass it on to the police for investigation. Relevant offences were defined by the Criminal Code. It was only under that Code, but not otherwise, that any offence was capable of being relevantly investigated.

## **5.5      Comment**

It may well be the case that Easton was upset about Richard Court having given the Goldrock minutes to his former wife, certainly upset if he

one reason, including his conviction that Richard Court should have remained neutral rather than appear to have taken Penny Easton's side.

When Easton described the documents as "confidential" or "highly confidential", in effect, he emphasised what he regarded as an impropriety. If he

done so. But he did not allege any facts or circumstances which suggested that it was.

Easton was certainly not prepared to let the matter rest. It is another question whether anything could ever have been done about it to Easton's

5.5.4            The documents had been provided to Penny Easton some six

contained "confidential information", there was nothing whatever that could be said to have been wrong about what occurred - wrong in the civil or criminal sense.

If it is correct that the documents were "confidential" or contained "confidential information" then everything that could be done had been done to

order restraining possible misuse and Penny Easton had given appropriate undertakings.

5.5.6 It is to be emphasised that the law does no more than protect confidentiality by preventing, so far as it can, its breach and by giving redress where damage has resulted from a breach which it has been unable to prevent. No criminal offence is involved unless there are more facts and circumstances than those which were unearthed by the police or those which have emerged at this inquiry.

5.5.7 The significance here is that no matter what Easton did, including the presentation of the petition, he could not, realistically speaking, have achieved more than already he had achieved. The information in the documents provided to Penny Easton had remained, so far as the evidence demonstrated, with her. No more damage was shown to have been done than already had been done by the disclosure of the information, some six years previously, in Parliament.

5.5.8 If Easton merely wanted the satisfaction of public exposure of what he considered was wrong conduct on the part of Richard Court and he believed that a petition would achieve it, then it was a choice open to him. It was for him, however, to say what the petition contained and what he would petition Parliament to do. This, however, is not what happened. Easton did not approach Halden to request him to petition Parliament at all. An impartial adviser, no doubt, would have discussed with Easton what outcomes he hoped to achieve and whether they were capable of achievement by the process of petition. If he had decided to proceed and the petition was drafted with a view to exposure of conduct said to be merely improper, the petition presented would have been very different in form with a very different outcome.

## **Chapter 6**

### **6.**

#### **6.1 Relevance to Conduct**

In his ruling on the legitimate ambit of inquiry by this Commission, the President of the Legislative Council said:

Parliament as a conference of managers, the preparation, including circulation, of a petition is not.

Whatever was done by members, ministers and others before the presentation of the Easton petition is not a proceeding in Parliament and is

6.1.2 I shall refer to the circumstances and events in the areas “open to circumstances and events outside Parliament following the tabling of the petition as “the relevant events”.

#### **Obligation to Present the Petition**

##### **6.2.1**

to prevent the presentation of the petition would be a contempt of Parliament. I accept, whether I am bound to accept it or not, that this statement is correct. It has

obligation by virtue of the use and custom of Parliament in conjunction with the provisions of Standing Orders including the provision which requires certification of a petition by the Clerk.

6.2.2 If Halden was obliged, as he said, to do all the things which he did before the presentation of the petition and Dr Lawrence was prevented by Parliamentary privilege from intervening, I would be precluded from scrutinising and evaluating conduct in the relevant events. Accordingly, it is necessary to say why this is not the case and why the above question which was put to Marquet and his answer do not have the pertinence claimed.

6.2.3 It was accepted by the Foss Committee that there is no legal obligation, that is, no enforceable obligation at law, on the part of a member of Parliament to present a petition. (Chaffers v. Goldsmith (1894) 1 QB 190).

6.2.4 But it is said that use and practice of Parliament recognises a Parliamentary obligation to do so. On the other hand, one or more witnesses (Berinson, for example, and Marquet) said that there is a discretion to refuse to present a petition in some circumstances. These “circumstances” were not spelt out and remain elusive. They do not appear from Standing Orders or from any written authority to which I was referred.

6.2.5 A relevant enigma is the extent, if any, to which the obligation exists if the petition is not “accurate”, a word which Halden said that Marquet had used to Easton.

6.2.6 Marquet said that he met with Halden on Thursday, 29 October “to work out how to try and verify certain statements that were in the documentation provided by Mr Easton” (T/s 2247).

6.2.7 The meeting on 29 October was arranged by Marquet. He contacted Halden and said “I need to talk to you about this matter”. He said that there were “a few things which were left unanswered” after he “went through the

documentation in relation to the police inquiries and the Official Corruption Commission and its activities". He said that he wanted to know "whether inquiries

was over or "wasn't being proceeded with and so on". He said that he wanted to know because "there were loose ends". If police inquiries "relating to matters that

it seemed pointless to petition the

House

"Did you discuss that with Mr Halden? -- Yes. I did in the sense that, look, I'm not happy about a petition going forward where there are still loose

6.2.8           He said that Halden agreed "that some sort of answer should be

6.2.9           Marquet said that it was agreed that he would make an enquiry of

6.2.10          Marquet said that on 29 October he spoke to Mr Ayton, Assistant

asked him a hypothetical question:

"In cases where police inquiries are made at the request of the OCC is it police inquiry?"

Ayton replied: "No".

Marquet did not explain why he was satisfied to proceed as a result of this response, nor how it can be said that it tied up "loose ends" nor

petition. In other words, would he have declined to certify the petition if it was "pointless to petition the House", or if he had been told that the police had

completed their inquiries, or if he had been told that no criminal offence had been committed or was involved?

6.2.12 Halden said that he did not warn Easton but that Marquet told Easton that the petition must be “accurate” and that, if it was not, there were “certain procedures in Parliament that could result in considerable difficulty for him” (T/s 3173). Halden also said that petitions do not have to be accurate (T/s 3172). However, Marquet did not say that he was satisfied about its accuracy. He said that he was satisfied that Easton had an “arguable case”, that he had not “invented a complete fabrication”. Marquet said that he said to Easton: “You have produced some pretty detailed documentary evidence to support your version of events. Now we get to the petition stage”. Did this mean that if he did not have an arguable case he would not have certified? What are the criteria of an “arguable case” in terms of a petition?

6.2.13 An inference from Marquet’s evidence is that tests of eligibility of a petition for certification included it showing “an arguable case” or “absence of complete fabrication” rather than “accuracy” which Halden said that Marquet told Easton was required. In any event, it was not explained what matter, fact or thing must be “accurate”.

6.2.14 This is not a matter I am permitted to determine. Only Parliament can say what degree of accuracy statements in a petition must have and what is meant by “accurate”. But it is not irrelevant that I have been given confusing evidence by those who might be expected to know. The Standing Orders which existed at the time were silent on these questions. It is notable, however, that in the absence of any clear understanding of the criteria of certification of a petition, that is, the criteria of the “entitlement” to petition Parliament, it could not be said,

attempt to prevent the presentation of the petition.

6.2.15

the exercise of a discretion by Halden to refuse to present the petition. It is not known if they did exist. I am required to assume that only Parliament has the

The contention, however, that Parliamentary use and custom apply in this case to exclude any comment by me about Halden's role (and the role

6.2.17            Even the most cursory glance at the relevant events demonstrates

signatory to a petition and requesting him or her to table it in Parliament.

6.2.18

of the Pike committee and when he sent a letter to the Public Service Commissioner with copies to the Premier and to Pike and when he telephoned presentation to the Legislative Council.

6.2.19            t have done so if it were not for the "advice" of Halden and the opinion of Marquet in response to a question by Halden as to the

6.2.20            It was the conduct of Halden, supported by Dr Lawrence, that led

assisted by what Halden said and did outside Parliament after its tabling.

6.2.21

petition which he had signed, this report would be silent about the conduct of Halden and of Dr Lawrence. That conduct would be a matter only for Parliament.

6.2.22 There is more. If Dr Lawrence had said to Halden that she did not and would not support the course which Halden proposed, in effect distanced herself from what he was to do, or if Halden had told Easton that he would do no more than present a certified petition signed by Easton if asked, a different course of events would certainly have followed.

## **Chapter 7**

### **7. PRINCIPLES OF REPRESENTATIVE GOVERNMENT AND CONCLUSIONS**

#### **7.1 Terms of Reference**

7.1.1 The Terms of Reference require my judgment about the propriety of conduct by holders of executive power and of public office in the relevant events.

#### **7.2 Executive Power**

7.2.1 *The Laws of Australia* at Vol. 19 para 19.3 writes:

“The executive is that authority within the political system which administers and executes the laws and which carries on the business of government”.

7.2.2 There is nothing to be said about holders of executive power. There is no evidence to found a conclusion that use of executive power played any part in the relevant events and circumstances. Cabinet as such did not act in the matter and its members either did what they could to arrest events or were entirely inactive.

#### **7.3 Public Office**

7.3.1 There was, however, relevant use of public office.

Dr Lawrence as Premier and Halden as a member of the Legislative Council were holders of public offices which each used.

7.3.3 It was submitted on behalf of Dr Lawrence that she was the Leader of the Parliamentary Labor Party and if she engaged in any relevant conduct it was only in that capacity that she acted. My conclusion is that her position as holder of the public office of Premier was indivisible from the other nominated role in matters involving the public or public interest.

7.3.4 The starting point of discussion of the conduct of Dr Lawrence and Halden is the duties and obligations of persons elected under the system of representative government.

#### **7.4 Representative Government**

7.4.1 Representative government is an integral part of our constitutional fabric. The source of power of elected representatives and those selected from them to govern, is the people. It is this critical feature which provides the springboard and rationale of evaluation of persons involved in the relevant events.

7.4.2 In Theophanous v Herald and Weekly Times Limited (1993-94) 182 CLR 104 Deane J said (at p. 180) that representative government “forms part of the fabric of the Constitution” which reflects “both the central thesis and the theoretical foundation of our Constitution and the nation which it established, namely, that all powers of government ultimately belong to, and are derived from, the governed or in Madison’s words, that ‘[t]he people, not the government, possess the absolute sovereignty’ ”.

7.4.3 Quick and Garran in “*Annotated Constitution of the Australian Commonwealth*” (1901) at p. 928 described the Federal Government and State

Governments as “merely different grantees and trustees of power acting for and on behalf of the people of the Commonwealth”.

The State of Western Australia enjoys representative government by virtue of its Constitution Act 1891.

Although discussion by the High Court in recent times has concerned rights to be implied in the Federal Constitution its observations about

representative government also exists.

7.4.6 \_\_\_\_\_ ane and Toohey JJ in Nationwide  
\_\_\_\_\_ (1991-2) 177 CLR 1 at p. 75 when they said:

“.... the Constitution’s doctrine of representative government is structured upon an assumption of representative government within the States and, to a limited extent, an assumption of the co-operation of the governments and Parliaments of the States in the electoral process itself.”

Theophanous followed two important decisions of the High Court in which the principles founding representative government were lucidly and emphatically reaffirmed. Nationwide News was one. The other was Australian Capital Television Pty Ltd v The Commonwealth (1992) 177 CLR 106.

7.4.7 In Australian Capital Television, the Chief Justice Sir Anthony Mason at p. 137 said:

"The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives."

7.4.8 The concept was at the forefront of those who agitated in the late 18th century for the change from monarchic to representative government. Tom Paine published "*The Rights of Man*" 1791-2 in response to the attacks on the concept of democracy by Edmund Burke in his "*Reflections on the French*

. Recent biographers of Paine argue for his rightful place as one of the founding fathers of the American Constitution which was the model for ours. One

that “*The Rights of Man*

Keane’s reviewer, Professor Gordon S Wood of Brown University says that “*The* is “the best and most succinct expression of American revolutionary political thinking ever written” (New York Review of Books, 8 June 1995).

Paine wrote: “The representative system takes society and civilisation for its basis; nature, reason and experience for its guide” (*Man*, Pelican Edition: p. 197)

It is a corollary of representative government, so understood, that elected representatives owe to the people a duty, akin to that of trustees, in the

King v. Boston (1923) 33

Horne v. Barber (1920) 27 CLR 494 per Rich J at

7.4.11            The High Court cases to which I have referred concerned freedom

may stem not only from restrictive laws but also from suppression of knowledge of events by falsely denying that they happened. The freedom cannot be exercised if

7.4.12            What I have said appears from the reasons of the judges.

In Nationwide

47)

:

“To sustain a representative democracy embodying the principles prescribed by the Constitution, freedom of public discussion of political and economic matters is essential: it would be a parody of democracy to confer on the people a power to choose their Parliament but to deny the freedom of public discussion from which the people derive their political judgments.”

7.4.14 His Honour went on to say (p. 48) that "Freedom of public discussion of government .... is inherent in the idea of a representative democracy".

7.4.15 In the same case, Deane and Toohey JJ said (at p. 72) :

"Moreover, the doctrine of representative government .... is not concerned merely with electoral processes. As has been said, the central thesis of the doctrine is that the powers of government belong to, and are derived from, the governed, .... The doctrine presupposes an ability of represented and representatives to communicate information, needs, views, explanations and advice. It also presupposes an ability of the people of the Commonwealth as a whole to communicate, among themselves, information and opinions about matters relevant to the exercise and discharge of governmental powers and functions on their behalf."

7.4.16 The same views, in another context, have been expressed by the Supreme Court of Canada (ref. Re Alberta Statutes (1938) SCR 100 per Duffy CJ at pp. 132-3, Canon J at pp. 145-6).

7.4.17 The obligations of elected representatives to the public are thus founded in the sovereign power of the people.

7.4.18 The submissions to the Commission are evocative of the urgent need for restatement of this basic precept.

7.4.19 In Theophanous Deane J said (at p. 183) :

".... there are legitimate reasons why the claims of the holders of high office in a representative government must be subordinated to the need for open and effective scrutiny and discussion of their official conduct and suitability. As has been said, all powers of government ultimately belong to, and are derived from, the people. It is not unreasonable that those who undertake the exercise of those powers, ordinarily for remuneration from the public purse, should be required to bear the burden of whatever is necessary to ensure full accountability to, and open scrutiny by, those whom they represent and whose powers they exercise. It is true that this

however, to be manifest." (My underlining.)

## **7.5**

7.5.1            It is not surprising that representative government, as explained, representatives shall be performed openly and with the utmost integrity.

### **7.5.2**

Legislative Council, he did not in law hold a public office and accordingly did not owe any duty to members of the public.

Such a contention was rejected by the High Court over seventy years ago in \_\_\_\_\_ (1923) 33 CLR 386. In their joint judgment Isaacs and Rich JJ at p. 402 said:

servant of the State:

transient or temporary existence, a position forming a recognised place in the constitutional machinery of government. .... \_\_\_\_\_

Parliament is a 'public officer' in a very real sense, for he has, in the words  
*Faulkner v. Upper Boddington Overseers* (1857) 3 CB(NS)

(My underlining).

7.5.4            ent on to explain that the duties of a member of Parliament were not confined within the walls of Parliament (see p. judges referred to a decision in New South Wales R v. White (NSW) (L.) 322, also to the effect that a member of Parliament held an 'office'.

## **7.6**

7.6.1            In the earlier case of \_\_\_\_\_ (1920) 27 CLR 495, Isaacs J (p.

"When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position: he cannot retain the honour and divest himself of the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticising it, and, if necessary, of calling it to account in the constitutional way by censure from his place in Parliament - censure which, if sufficiently supported, means removal from office. That is the whole essence of responsible government, which is the keystone of our political system, and is the main constitutional safeguard the community possesses. The effective discharge of that duty is necessarily left to the members' conscience and a judgment of his electors, but the law will not sanction or support the creation of any position of a member of Parliament where his own personal interest may lead him to answer prejudicially to the public interest by weakening (to say the least of it) his sense of obligation of due watchfulness, criticism, and censure of the administration." (My underlining).

7.6.2        Horne was decided on a public policy basis to deny a commission to an agent who agreed to pay a share of his commission to a member of Parliament for using his position as member to obtain a sale of property to the Victorian Government.

7.6.3        The facts in Horne were very different from those here. The member's conflict of interests was more clearly demonstrable. Nevertheless, the High Court in that case clearly confirmed the principle that a member of Parliament is in breach of his or her public duty if he or she prefers personal interests to those of the public.

7.6.4        It is acknowledged that an attempt here to set a standard that members of Parliament must avoid a conflict between their personal political interest (including loyalty to their political party) and the interests of the public in a party political system, would be met with derision. It is accepted that conflicts of that kind occur in the way the system presently operates. It is inevitable that it does occur, I think, because an elected representative naturally has a conflict

between his or her personal interest in being seen by voters in the best possible light and the interest of the public in exercising its judgment on accountable

The problem could not be more unhappily illustrated than by the relevant events here. Promotion (in every sense) of the Easton allegation against

it was capable of inflicting, ephemeral as it turned out to be, on their principal political opponent. But it also had the potential, which turned out to be more

sister and other family members. Moreover, the venture promised and yielded nothing of the benefits which Easton no doubt expected and was given to expect.

Evaluation of the conduct of Dr Lawrence and Halden is grounded in the principles of representative government to which I have referred, particularly

accountable to the governed, that is, the people who are the source of their trusteeship. A preference for personal interest over public interest is a breach of

does not justify preference of personal interest in the circumstances and events investigated by the Commission. If political licence is to be taken into account, a

7.6.7 Before I turn, however, to the particular circumstances which

about the role of Dr Lawrence's untruthful denial of her pre-petition knowledge and involvement, and the untruthful denial of Halden that he kept her informed from the

7.6.8 The denial by Dr Lawrence that she was briefed about the petition

untrue.

7.6.9 There is a tendency among commentators, and among others, to attach less significance to lies by public figures because so many tell them so often. Prevalence of such misconduct does not excuse it or make it any less serious.

7.6.10 There is more than one aspect to untruthfulness by elected public figures. It damages not only the trust of the people in their representatives but also their trust in the representative system. Moreover, untruthfulness in high places has the effect of keeping from the public, knowledge of events which it is entitled to discuss and judge. The health of representative government and the freedoms it promises depend on open government.

7.6.11 Dr Lawrence and Halden did not tell the truth about what actually occurred before the petition was presented. The facts are still not fully known. The beneficial owners of power, the people, are entitled to that knowledge to make their judgment. Essentially, it is not merely the untruthfulness but its effect in suppressing information which the people are entitled to know, which gives rise to impropriety.

7.6.12 A basic promise of representative government is that it is open to view. Tom Paine wrote:

“In the representative system, the reason for everything must publicly appear. Every man is a proprietor in government and considers it a necessary part of his business to understand .... It can only be by blinding the understanding of man, and making him believe that government is some wonderful mysterious thing, that excessive revenues are obtained.”  
*(The Rights of Man, Pelican Edn. p. 206)*

## 7.7 Dr Lawrence - Particular Circumstances relevant to her Conduct

7.7.1        The conflict of interest which Dr Lawrence had in the particular circumstances was self-made. The Easton matter was not a concern of government. There was no need whatever for intervention or interest by her, as Premier, in what was essentially a private grievance within a domestic dispute framework. There was no call for involvement by government of any kind.

7.7.2        If Easton had requested any member of Parliament to present a petition which complied with Standing Orders and which had been certified by the Clerk, the whole process could have been safely left to the Legislative Council and the member involved in the presentation.

7.7.3        In addition, the allegations about which Dr Lawrence was briefed were stale. They concerned events which had happened some six years previously. They were made by a disaffected party to a Family Court proceeding, were tendentiously expressed and flimsy in substance. The allegation against an alternative head of government was one in which the public had a vital interest. The incumbent head of government had a responsibility, it is true, to expose matters of public interest even if it concerned a rival contender for power and even if there was political advantage to be gained. There was a corresponding duty, however, not to misinform the electorate or be a party to it being misinformed.

7.7.4        Dr Lawrence held the high office of Premier. A head of government is in a special position which makes it imperative that the duties of that public office prevail over self interested political temptations.

7.7.5        I have already indicated that the system of representative government necessarily means that a head of government, let alone other persons in high office, cannot divorce personal or personal political considerations from his or her obligations and responsibilities of office to the public. Accordingly, it does

not matter that Dr Lawrence may have been consulted and briefed by Halden as Leader of the Parliamentary Labor Party rather than as Premier. As head of government she had a responsibility to the public in what she said and did, irrespective of whether she was consulted merely as a political party leader.

7.7.6 When Dr Lawrence was first informed by Kovacs and Willoughby about Easton's allegations, she should have appreciated her obligations of office to ensure that any advantage to herself was not at the expense of members of the public, especially the families involved.

7.7.7 The reasons, which were obvious to Pearce, for example, who refused to return Easton's telephone call, to Marcelle Anderson and to members of Cabinet, should have been obvious to Dr Lawrence. If Dr Lawrence was tempted to become involved, it was, at the very least, imperative to ensure the allegations were thoroughly checked.

7.7.8 There may be occasions on which the lives of ordinary people must be adversely affected in the greater cause of public interest. This was certainly not one of them. I do not accept that Dr Lawrence was disempowered from saying or doing anything which would have changed the course of events.

7.7.9 It was contended, as I have said, that Dr Lawrence would have been in breach of Parliamentary privilege if she had attempted to prevent the presentation of the petition. I refer to Chapter 6.2. The submission, however, has no real relevance to what actually occurred. I emphasise that the course of events would have been different if Dr Lawrence had given a different response. She could, and should, have dissociated herself and her government from whatever course Easton decided to take in pursuit of redress of his grievances. She should have directed her staff not to involve themselves in any way whatsoever and told

Halden that she would not support his taking up, and promotion of, the Easton allegations.

7.7.10 The suggestion that Dr Lawrence was powerless in the circumstances is far fetched. As Head of Government she was not bereft of power and influence. She conceded as much in relation to the subject matter of this report. On 23 March 1993 Janine Cohen asked her for the purpose of her article published in June 1993 in *The Australian Magazine* :

“You didn’t know about the details in the petition?”

and she answered :

“No. God, if I had I wouldn’t have let them go near it, that’s the point isn’t it, surely, .....

## **7.8 Propriety of Conduct of Dr Lawrence**

7.8.1 In the circumstances the conduct of Dr Lawrence in the use of her office as Premier was improper :

(a) in supporting the use of Easton’s grievances and allegations for her own personal interests at the expense of the interests of the parties to the Easton matrimonial dispute and members of their families;

(b) in falsely denying to the public her knowledge of, and participation in, the events and circumstances preceding the presentation of the petition;

(c) in depriving the public of its right and freedom to discuss and judge her participation in the relevant events by untruthfully denying the existence of that participation.

## **7.9 Conduct of Halden - Particular Circumstances**

7.9.1 The conduct of Halden is also to be considered in the context of the particular circumstances against the background of the duties and obligations of his public office.

7.9.2 When Easton approached Halden his target was his sister-in-law Margaret McAuley and his strategy was to have her removed from the Pike Committee. He repeated his allegation about Richard Court no doubt to attract Halden's interest. Easton had used this bait when he telephoned Halden's office as he had done previously when he telephoned the office of Pearce. Throughout, Easton was pursuing his somewhat ignoble endeavours to revenge his perceived defeat in the Family Court at the hands of his former wife and her family.

7.9.3 Halden had no obligation to take up Easton's allegations. At the times he took them up and went to the Premier's office, then to Marquet and took Easton to see Marquet, Easton had made no request to Halden to present any petition nor had the slightest intention of doing so.

7.9.4 Halden's interest was in the potential of the allegations to score against the Leader of the Opposition and is the reason for his conduct. That interest is well illustrated by his out of Parliament statements which are detailed in para 4.4. His protest that he did no more than perform the obligations of his office to present the petition does not accord with the facts.

## **7.10 Features of Conduct**

7.10.1 Halden made two enquiries only. One was to David Orr of the OCC who refused to provide any information at all and the other was to Matheson which yielded only that those having present custody of the Exim Board minutes (possibly the Goldrock minutes too) considered that access to Richard Court had not been given. The enquiry did not relate to a time when the minutes were in different hands. In any event, the enquiry did not cover what actually happened, namely that such minutes as were given to Richard Court were provided from a different source many years previously.

7.10.2 Halden knew (or should have known if he had checked them as he said that he had) from the documents provided by Easton that Richard Court might not ever have had copies of the Exim directors' minutes or given them to Penny Easton because Penny Easton swore in Court that the reference to them in the affidavit of discovery was a mistake and that she did not ever have them.

7.10.3 Marquet must have considered, and Halden must have believed, that at least a foundation of some kind for the allegations should be checked before the petition was certified. If that were not so, the concern "about loose ends" would not have been expressed nor the perusal of the vast documentation supplied by Easton undertaken.

7.10.4 Halden knew from the Explanatory Statement and the documents supplied by Easton, if he had checked them as he claimed, that the allegation, which Easton said was perjured, was not an accurate account of the evidence given to the Family Court by either Penny Easton or her sister Margaret McAuley.

7.10.5 Halden said that he had read s. 7(1)(a) of the Official Corruption Act. If he had read it, he knew that it did not create an offence and that therefore it was untrue to say that Richard Court was under police investigation for having breached it.

7.10.6 Halden knew that the allegation of Easton that Richard Court had provided "confidential documents" to Penny Easton was not, without more, an allegation of corruption or of any offence under the Criminal Code.

7.10.7 Halden, in his media statements, gave the public to believe that Richard Court faced an allegation of corruption and there were 'facts' to support it. He did so deliberately, not caring if it was true or false.



7.10.8 Halden arranged the widest possible media coverage for petition.

7.10.9

- the state of police investigation of the perjury allegation;
- the state of the Family Court proceedings;
- the state of the police investigation of the corruption allegation;
- contents of documents;
- to whom the minutes related;
- in question and lawfully gave copies to Penny Easton.

7.10.10 that he then had the subject documents, that they concerned events which had occurred at about that time and that he knew that Exim was mentioned extensively

7.10.11 Halden also knew that it was not claimed that Penny Easton had to her court claim for division of property and that their disclosure in the Family Court, if it occurred, could not be published outside the court by virtue of s. 121 of

## 7.11 Halden's Influence on the Course of Events

7.11.1 At any time before its presentation, events would have taken a different course if Halden had not taken up the Easton cause and steered him into a Parliamentary process or had informed Easton that he would present the petition but do nothing else, that is, that he would decline to give the public support to the allegations which, in fact, he came to give to them. That different course would have been assured if Halden had advised Easton, before Easton considered the petition process, of non-parliamentary avenues of complaint such as to the Commissioner of Police, to the Director of Public Prosecutions and to the State Ombudsman.

7.11.2 It is highly improbable that Easton would have drafted the petition of his own accord or that, if he had done so, it would have taken the form that it did take.

7.11.3 The likelihood of a different course is even greater if Halden and/or Dr Lawrence had made it known to Easton that they would publicly distance themselves from the allegations.

7.11.4 The obligations of the public office of a member of Parliament under representative government lead to the conclusion that Halden made improper use of that public office in the particular circumstances.

7.11.5 He involved himself unnecessarily in the events preceding the petition being tabled in circumstances of conflict between his personal interests and those of the parties to the Easton matrimonial dispute and the members of their families. He had not been requested to present a petition. A petition only came to be signed as a result of his own conduct.

Halden resolved that conflict of interests by preferring his personal interests.

He kept information from the public about his and Dr Lawrence's involvement in the circumstances and events preceding the presentation of the

Lawrence, his provision of information to the media and his failure to make proper checks of the allegations.

### **Halden's Use of Public Office**

7.12.1

circumstances, improper :

(a)

interests at the expense of the interests of the parties to the Easton matrimonial dispute and members of their families;

in adopting the allegations outside Parliament and making untrue and/or misleading statements about them;

in falsely denying outside Parliament the participation of Dr

events before the petition was tabled;

(d)

participation of Dr Lawrence and/or those members of her staff by falsely denying that it occurred;

- (e) in lending the weight of his public office outside Parliament to allegations that criminal offences had been committed by persons named in the petition without having taken any reasonable steps to verify the existence of any proper foundation for those allegations;
- (f) in keeping information from the public about his own involvement in the circumstances and events preceding the presentation of the petition, namely, his discussions with the staff of Dr Lawrence, his briefing of Dr Lawrence, his provision of information to the media and his failure to make proper checks of the foundations of the allegations.

## **8 INFORMATION AND DETERMINATION REQUIRED BY TERMS OF**

### **8.1 Terms of Reference 1(a), (b) and (c))**

#### **Ministers of the Crown**

Nine members of the Lawrence Ministry (plus the Cabinet Secretary) had

- (1) Dr Lawrence's involvement is detailed in Chapters 3, 4 and 6.

The circumstances of Wilson, Beggs, Gallop, Ripper, Watson and McGinty having acquired knowledge are discussed in Chapters 3 and

Watson said that "a couple" of the Cabinet Ministers said during the

some of the Ministers demonstrated background knowledge. Neither could name those Ministers.

Halden gave evidence that he had a discussion with Taylor prior to the tabling - perhaps on 29 October - in which Taylor said he had heard that

Halden said that although Taylor expressed concern about the matter, he "at no time suggested to me that I ought not do it".

Taylor had no recollection of such a conversation but gave evidence of a conversation in about May 1995 in which Halden raised the 1992 discussion, and having learned that Taylor did not remember it, suggested it was best forgotten.

As has been said, on 2 November Taylor opposed the use of Easton's material.

He said that after the Cabinet meeting he heard that Halden was intending to raise the matter. He saw Dr Lawrence by chance on the morning of the 5 November and expressed his surprise. She told him that if anything were going to happen she would get back to him.

Her failure to do so precipitated the tender of his resignation on that evening. In the face of her distress he changed his mind.

- (4) I am unable to determine if Berinson learned of the matter during the Cabinet meeting of the 2 November, but certainly he knew of it by the evening of Wednesday 4 November when he was advised of it by Marquet. Willoughby said that Berinson attended the Premier's Parliamentary office on the evening of Wednesday 4 November apparently to ensure that Dr Lawrence was apprised of the timetable for the petition.

It does not appear that Berinson's advice or opinion was sought by anyone. He was told of the matter as a courtesy in light of his position as Leader of the Government in the Upper House.

- (5) David Smith declined to give evidence as to any Cabinet discussion. Both Wilson and Kobelke gave evidence that Smith was present during the

knew of the matter from the time of that Cabinet meeting.

(6)

during the relevant discussion. I am not able to determine that she was present at the critical time or what, if anything, she knew about the petition

(7)

Henderson gave evidence that she was present for the meeting, but had remembered if it took place. I am unable to find that she had relevant knowledge or involvement.

Bridge and Hill were probably not present during that part of the Cabinet meeting in which the relevant discussion occurred. If that is so, then they

(9)

Edwards was not present at the meeting, but learned of the matter in

#### 8.1.2

#### **Other Members of Parliament**

Halden's position is discussed in Chapters 3, 4, 5 and 7.

(2)

t meeting as already discussed in Chapters 3 and 4 and learned of the matter at that time.

Jacqueline Watkins learned of the matter as a result of a request from Halden that Easton use some of the facilities in her electoral office. That

(4) Elizabeth Constable was told of the petition at least by Tuesday 3 November when she discussed the matter with Marquet.

- (5) Hon Eric Charlton MLC also learned of the petition from Marquet "days before" it was tabled. Marquet's conversation with him centred on the political consequences of Richard Court having given documents to Penny Easton which was associated with or consequent upon a "personal relationship".
- (6) Robert Pearce was approached through his electoral office by Easton at least a week and probably two weeks before his resignation from Cabinet on 21 October. Therefore, from that time, he knew that Easton had information arising from a Family Court action and which bore on Richard Court. The next Pearce heard of the matter was on the morning of 5 November when Watkins alerted him to the prospective tabling. Consequently, Pearce spoke to Halden who explained what was to occur. Whilst Pearce's concerns were to some extent placated, his attitude remained one of disapproval.
- (7) Hon Hendy Cowan MLA said he became aware of a rumour circulating about government action in the House which might cause embarrassment to Richard Court. That was one or two days prior to 5 November. He could not recall who told him of the rumour, nor with whom he discussed it.
- (8) Robert Pike spoke to McAuliffe on the telephone about Easton's grievance concerning Margaret McAuley on 2 October and received Easton's letter on about 14 October 1992. He sent it to Hilditch for distribution to the members of his Committee. Marquet said that he told Pike of the petition on the morning of its presentation. Pike is deceased.

### 8.1.3

#### **Staff of Ministers and Members**

- (1) Love gave evidence that he first became aware of the Easton at a meeting one evening in Willoughby's office either early in the week in which the petition was tabled or possibly the week before. Also present according to the conversation, the petition was, at that stage, in the process of being drafted by Marquet. He was told that the allegation wife of the man who had provided the information. Love formed the view that if there had been anything in the information, which was stale, it would acknowledged that he was briefed on the matter by them and Halden. He did nothing to dissuade them from pursuing it and said that he was
- (2) Russell stated that he first became aware of the Easton grievances in the relevant discussion had taken place in Willoughby's office and had involved himself, Halden, Kovacs and Willoughby. He had no specific left on the basis that Halden would talk to Marquet about the matter. That no such discussion had yet taken place and that no checks had yet been commencing 19 October 1992 which is confirmatory of Kovacs' evidence.

- (3) The involvement of Willoughby and Kovacs has been discussed in Chapters 3 and 4.
- (4) Douglas Durack joined the Premier's staff as the junior media secretary in late October 1992. His evidence was that he knew only that Kovacs and Willoughby were "working on something to do with the then Opposition Leader" prior to the tabling of the petition. That meant, he said, that they were "looking at the possibilities". He could add nothing to that.

### **Beggs' Office**

8.1.4 Steven Imms was (and still is) the Principal Private Secretary to the Minister of Transport. On Monday 2 November 1992, he was told by Pamela Beggs that something was going to happen in Parliament which involved Halden and which would be damaging to Richard Court. She appeared to be concerned about it.

### **Wilson's Office**

8.1.5 Francis Sullivan was Senior Policy Officer to Wilson. He had a discussion with Wilson on 2 November 1992 in which Wilson, irritated and agitated, spoke of a potential Parliamentary procedure involving John Halden, a procedure which Wilson reported had been the subject of strong objection by Gallop.

### **Watkins' Office**

8.1.6 Darren Ray was Jacqueline Watkins' electorate officer. Ray had previously worked for Halden but had resigned in the context of some factional

dissent over his activities. Whilst working for Jacqueline Watkins, he still undertook some duties for Halden who was convenor of the broad left faction of the Party.

8.1.7 He said he was telephoned by Halden not more than a week prior to the tabling of the petition and was told something about the matter, and that some (unspecified) assistance by him might be required. He claimed that nothing further occurred until Easton contacted him on the morning of 5 November. Then Easton attended Watkins' office where Ray assisted with photocopying of documents. They then went to Parliament House.

8.1.8 Ray denied contacting members of the press about the matter prior to 5 November, although he acknowledged arranging Easton's press conference on the 6th. He also denied sending the facsimile message referred to in para 4.3.29. Further he denied two telephone conversations with Matheson concerning access to Exim and Goldrock minutes. And he was in conflict with Kovacs in his claim that Kovacs telephoned him after the tabling to obtain information on the relationship between Penny Easton and Richard Court.

8.1.9 I did not have confidence in the reliability of the evidence of Ray. He was more deeply involved in the events than he admitted. His motivation throughout has been to assist Halden. I prefer other evidence which is in conflict with his and do not have confidence otherwise in his account regarding the extent of his communication with the media or in the above denials.

#### **Halden's Office**

8.1.10 Patricia Adams was relieving electorate officer for Halden in Joanne Whalley's absence in the week commencing 19 October 1992. Her

involvement with Easton, consisting of at least one telephone conversation and a facsimile transmission to him, has been described in paras 3.3.9 - 3.3.12.

8.1.11 Joanne Whalley said that she first heard of the petition about a week and a half to two weeks before it was tabled. She learned of it from Halden. She was not asked to assist in any way. Since she was absent from the office during the week commencing 19 October, she must have been advised of it early in the week commencing the 26 October.

## **8.2 Terms of Reference 1(d) - Communication with News Media**

8.2.1 At some time between 26 October to 2 November 1992, Parry of *Channel 7 Nightly News* was told about matters concerning the petition. Parry refused to say from whom he received that information.

8.2.2 Halden told Irving of *The Australian* on either 3 or 4 November that "something worth his while" would occur in the Legislative Council on 5 November.

8.2.3 Elizabeth Constable told McGeough of *The West Australian* on 4 November that "something that involved Richard Court" and Halden was going to occur that would cause Richard Court "severe embarrassment". Halden confirmed this to McGeough.

8.2.4 Willoughby told Alison Fan on the morning of 5 November that a "scandal to do with Richard Court" was "about to break".

8.2.5 Halden arranged for Parry to meet Easton and Ray on the morning of 5 November. Parry refused to say what discussion occurred between himself and Halden on that day.

## **Chapter 9**

### **SUMMARY OF CONCLUSIONS**

9.1

9.2 Members of Parliament are holders of public office:

\_\_\_\_\_(1920) 27 CLR 495 at pp. 500, 501;  
The King v. Boston

9.3 Dr Lawrence was the holder of a public office as Premier and member of

9.4 Halden was the holder of a public office as a member of the Legislative

9.5 Easton made contact with Halden's office during the week commencing 19

9.6 Halden approached the Premier's office before meeting with Easton and

Kovacs briefed Dr Lawrence immediately after that first approach by Halden.

9.7

which Dr Lawrence participated in discussions about use of the Easton allegations.

9.8

briefing of Dr Lawrence by Halden late in the week preceding the petition's

9.9 Dr Lawrence raised the Easton allegations in the regular Cabinet meeting held on Monday 2 November. There was forceful opposition to use of the material. Dr Lawrence indicated that the matter would be brought back to Cabinet before it was taken any further.

9.10 Later that day Dr Lawrence invited Marcelle Anderson to join a discussion in the Premier's Office about the matters to be raised in Parliament. Anderson warned against getting involved.

9.11 The denial by Dr Lawrence that she was present at these discussions or that she was briefed about the Easton allegations before 5 November 1992 is untrue. Halden's denial that he in fact briefed her is similarly untrue.

9.12 Halden had no obligation to take up Easton's allegations. His protest that he did no more than perform the obligations of his office to present the petition does not accord with the facts. Easton did not approach Halden with a request that he present a petition. Easton came to sign the petition only as a result of Halden's intervention.

9.13 The Easton matter was not a concern of Government. There was no need whatever for intervention or interest by Dr Lawrence, as Premier, in what was essentially a private grievance within a domestic framework.

9.14 In a number of statements that Halden made to the public via the media after the petition was tabled, he adopted the allegations in the petition and made untrue and misleading statements about them. He said he checked the facts of the petition but he did not.

9.15 Halden made an untrue statement about the number and identity of

The propriety of the conduct of Dr Lawrence and of Halden is to be

- 9.17 The relevant principles of representative government are :

The source of sovereign power is the people :

Australian Capital Television Pty Ltd v. The Commonwealth

Nationwide News Pty Ltd v. Wills (1991-2) 177 CLR 1 at p.

Theophanous v Herald and Weekly Times Ltd (1993-4) 182 CLR

- (b) e right to know and the freedom to discuss, criticise and judge the conduct of their elected representatives :

\_\_\_\_\_ (1991-2) 177 CLR at pp. 47-8, 72;

Australian Capital Television 138,  
210

- (c) The right and freedom to discuss, criticise and judge the conduct

exercised if that conduct is known or made known :

Theophanous

- (d) Untrue denial of involvement in conduct  
know and of the freedom to discuss, criticise and judge that conduct.

Members of Parliament as elected representatives have an obligation to the people not to act in their personal interests at the

Horne v. Barber (1920) 27 CLR 494 at pp. 500, 501;  
\_\_\_\_\_ (1923) 33 CLR 386 at p. 402.

9.18 As Premier and Head of Government Dr Lawrence was duty bound not to put herself in a position where her own personal interests might lead her to act to the disadvantage of members of the public or the public interest. Personal interest must not conflict with public duty:

Horne v. Barber (1920) 27 CLR at p. 502.

9.19 In the context of the principles of representative government, the conduct of Dr Lawrence, as Premier, in the circumstances and events prior to and since the presentation of the petition was improper:

- (a) in supporting the use of Easton's grievances and allegations for her own personal political interests at the expense of the interests of the parties to the Easton matrimonial dispute and members of their families;
- (b) in falsely denying to the public her knowledge of, and participation in, the events and circumstances preceding the presentation of the petition;
- (c) in depriving the public of its right and freedom to discuss and judge her participation in the relevant events by untruthfully denying that participation.

9.20 In the light of the principles of representative government the conduct of Halden as a member of Parliament was, in the same circumstances, improper:

- (a) in using Easton's grievances and allegations for his own personal interests at the expense of the interests of the parties to the Easton matrimonial dispute and members of their families;

- (b) in adopting Easton's allegations outside Parliament and making untrue and/or misleading statements about them;
- (c) in falsely denying outside Parliament the participation of Dr Lawrence, Love, Kovacs, Willoughby and Russell in relevant events before the petition was tabled;
- (d) in depriving the public of its freedom to discuss and judge the participation of Dr Lawrence and/or those members of her staff by falsely denying that it occurred;
- (e) in lending the weight of his public office outside Parliament to allegations that criminal offences had been committed by persons named in the petition without having taken any reasonable steps to verify the existence of any proper foundation for those allegations.
- (f) in keeping information from the public about his own involvement in the circumstances and events preceding the presentation of the petition, namely his discussions with the staff of Dr Lawrence, his briefing of Dr Lawrence, his arrangement of the media coverage of the Easton allegations and grievances, his provision of information to the media about them and his failure to make proper checks of the foundations of the allegations.

## **ANNEXURE 1**

### **LIST OF COUNSEL AUTHORIZED BY THE COMMISSION TO APPEAR BEFORE IT**

Mr M A McAuliffe	Mr B M Easton
Mr J R Ludlow	
Mr M L Barker	Mr J A McGinty
Mr N D Pope	Dr G I Gallop
Ms C L Tan	Hon E K Hallahan
	Hon Y D Henderson
	Dr J Watson
	Mr E S Ripper
	Hon E F Bridge
	Mr J C Kobelke
Mr R V Gyles QC	Dr C M Lawrence
Ms C J McLure	
Mr H Werksman	
Mr M F Dwyer	
Mr H J Wisbey	Hon R F Court
Ms L G Rafferty	
Mr M G Pendlebury	Hon C E Griffiths
Mr D J Bishop	
Mr C T Gollow	Mr R G Willoughby
Mr G P Miller QC	Ms P A Beggs
Ms J A Wager	
Mr P J Vincent	Hon S J Halden
Ms E S M Yuen	
Ms P M Hogan	
Mr A S Stavrianou	Ms M Anderson
Mr P J Vincent	Hon D L Smith
Ms L C Evans	Mr R A Love

Mr P Ward

Ms C L Tan

Hon G J Edwards

Mr J M Berinson

## ANNEXURE 2

### **LIST OF WITNESSES WHOSE EVIDENCE WAS RECEIVED BY THE COMMISSION**

<b>NAME</b>	<b>RELEVANT POSITION IN 1992</b>
<b>ADAMS</b> Patricia Ann	Volunteer campaign worker for Hon J Halden MLC
<b>AGNEW</b> Joanne	Senior Policy Officer, Office of the Premier
<b>ALDWORTH</b> John Douglas	Detective Senior Sergeant, Official Corruption Commission Task Force
<b>ANDERSON</b> Marcelle	Chief Executive, Department of the Cabinet
<b>ARTHUR</b> John Stuart	Director, Government Media Office
<b>AYTON</b> Leslie Donald	Assistant Police Commissioner (Crime Operations)
<b>BEGGS</b> Pamela Anne	Minister for Racing & Gaming, Transport and Tourism
<b>BERINSON</b> Joseph Max	Leader of the Government in the Legislative Council, Attorney General
<b>BLACKBURN</b> Estelle Rahima	Press Secretary, Office of the Premier
<b>BRIDGE</b> Ernest Francis	Minister for Water Resources, Agriculture and the North West
<b>BULL</b> Brian	Commissioner of Police
<b>CALLANDER</b> Diana Louise	Journalist, The West Australian Newspaper
<b>CAMPBELL</b> Barbara	Mother of Penny Easton

<b>CHARLTON</b> Eric James	Shadow Minister for Transport and Aboriginal Affairs
<b>CLOUGH</b> Peter	Principal Private Secretary to Hon Ian Taylor MLA
<b>CONSTABLE</b> Elizabeth	Member of Legislative Assembly
<b>COURT</b> Richard Fairfax	Leader of the Opposition
<b>COWAN</b> Hendy John	Leader of the National Party
<b>DURACK</b> Douglas Reginald	Media Secretary, Office of the Premier
<b>EASTON</b> Brian Mahon	Husband of Penny Easton
<b>EDWARDS</b> Graham John	Minister for Police, Emergency Services, Sport & Recreation
<b>GALLOP</b> Geoffrey Ian	Minister for Education, Parliamentary & Electoral Reform, Fuel & Energy, Micro & Economic Reform, Minister Assisting the Treasurer
<b>HALDEN</b> John	Member of Legislative Council
<b>HALLAHAN</b> Elsie Kay	Minister for Education, Training and The Arts.
<b>HENDERSON</b> Yvonne Daphne	Minister for Industrial Relations and Consumer Affairs
<b>HERSEY</b> Robert John	Detective Senior Sergeant, CIB, E Command
<b>HILDITCH</b> Mark Anthony	Committee Clerk, Legislative Council
<b>HILL</b> Gordon Leslie	Minister for Mines, Fisheries, Minister Assisting the Minister for Employment, Trade & Investment
<b>HOLM</b> Doretta	Receptionist, Department of the Cabinet

<b>HOPE</b> Alistair Neil	Crown Prosecutor, Office of the Director of Public Prosecutions
<b>HUGHES</b> Raymond Norman	Assistant Under Treasurer, Department of Treasury
<b>HUMPHRIES</b> David Mark	Perth Correspondent, Melbourne Age and Sydney Morning Herald Newspapers
<b>HUMPHRY</b> Christopher Raynor	Solicitor, Mallesons Stephen Jaques
<b>IMMS</b> Stephen Neil	Principal Private Secretary to the Minister for Transport
<b>IRVING</b> Mark Robert	Journalist, The Australian Newspaper
<b>KENNEDY</b> Peter St John	Presenter, ABC Radio
<b>KOBELKE</b> John Charles	Parliamentary Secretary of Cabinet
<b>KOVACS</b> Zoltan	Press Secretary, Office of the Premier
<b>LAWRENCE</b> Carmen Mary	Premier, Western Australia
<b>LEONARD</b> William James	Detective, Official Corruption Commission Task Force
<b>LOGAN</b> Ellen Elizabeth	Senior Appointments Officer, Office of the Premier
<b>LOVE</b> Ross Andrew	Executive Director, Office of the Premier
<b>LOXLEY</b> Steven Victor	Chief of Staff, The West Australian Newspaper
<b>MACLAURIN</b> Alison Fan	Senior Reporter, TVW Channel 7
<b>MAKOWIECKI</b> Eva Irene	Acting Manager, Human Resource Services, Ministry of Premier & Cabinet
<b>MARQUET</b> Laurance Bernard	Clerk of the Legislative Council

<b>MASAREI</b> Craig Anthony	Solicitor, Corser & Corser
<b>MATHESON</b> Bradley Anthony	Senior Policy Adviser to Minister Assisting the Treasurer
<b>MCAULIFFE</b> Mark Adrian	Solicitor, McAuliffe & Associates
<b>MCGEOUGH</b> Paul Joseph	Journalist, The West Australian Newspaper
<b>MCGINTY</b> James Andrew	Minister for the Environment
<b>MCKECHNIE</b> John	Director of Public Prosecutions
<b>MEERTENS</b> Grace Sara	Journalist, The West Australian Newspaper
<b>MURPHY</b> Kieran Peter	Journalist, Channel 10
<b>ORR</b> David James	Executive Officer, Official Corruption Commission
<b>OVERMAN</b> Gerard Marius	Crown Prosecutor, Office of the Director of Public Prosecutions
<b>PARRY</b> Geoffrey Frank	Reporter, TVW Channel 7
<b>PEARCE</b> Robert John	Leader of the House in the Legislative Assembly
<b>QUECKETT</b> Malcolm Andrew Scott	Journalist, the West Australian Newspaper
<b>RAY</b> Darren Charles	Electoral Officer for Ms J Watkins MLA
<b>RIPPER</b> Eric Stephen	Minister for Community Development, Youth Justice and the Family
<b>ROLFE</b> Graeme John	Director General Finance, Department of Treasury
<b>ROLINSON</b> Barrie Norman	Detective Superintendent, CIB,

E Command

<b>RUDD</b> John Edward	Director of News, TVW Channel 7
<b>RUSSELL</b> Edward Thomas	Director, Office of the Premier
<b>SATTLER</b> Howard Neville	Presenter, Radio 6PR
<b>SAXON</b> Martin Roy	Journalist, The Sunday Times Newspaper
<b>SHERVINGTON</b> Christine Mary	Senior Executive Officer, Office of the Premier
<b>SMITH</b> David Lawrence	Minister for Local Government, South West, Planning and Lands
<b>SULLIVAN</b> Francis John	Senior Policy Officer to the Minister for Health
<b>TANNIN</b> George Thomas	Crown Prosecutor, Office of the Director of Public Prosecutions
<b>TAYLOR</b> Ian Frederick	Deputy Premier and Minister for State Development
<b>THOMPSON</b> Les <b>WATSON</b> Judyth	Presenter, Radio 6 PR Minister for Aboriginal Affairs, Minister Assisting the Minister for Womens Interests, Minister for Seniors Interests and Multi-cultural and Ethnic Affairs
<b>WAUCHOPE</b> Malcolm Charles	Acting Chief Executive, Department of the Premier
<b>WHALLEY</b> Joanne Gaye	Electoral Officer for Hon J Halden MLC
<b>WHATMAN</b> Linda	Current Electoral Officer for Hon J Halden MLC
<b>WILLOUGHBY</b> Robert Gordon	Senior Media Secretary, Office of the Premier

**WITHERS** Edward John

Director, Goldrock Investments Pty Ltd  
(1985/86)

**YOUNG** Ruth Mary

Administrative Officer, Office of the  
Premier

## **ANNEXURE 3**

### **LIST OF STAFF ENGAGED IN THE SERVICE OF THE COMMISSION**

JOHNSON Michael	Executive Officer
JEBB Brian	Legal Research Officer
BYRNE Peter	Administration Manager
UTLEY Keith	Investigator
MCGINNITY Kevin	Investigator
DE GIORGIO Ralph	Investigator
STRICKLAND Patricia	Commissioner's Secretary
MALLON Poppy	Counsels' Secretary
KOTSOPOULOS Helen	Secretary/Receptionist
MCADAM Frances	Records Manager
LEMUS Ellen	Records Officer
OZOLS Dorothy	Records Officer
WHALL Delia	Commissionaire
PARKER Michael	Transcript Officer
MCKENNA Susan	Media Liaison Officer
SALISBURY Darryl (DMR Group)	Project Manager (Information Technology)
WRIGHT John (DMR Group)	Information Technology Officer
SCOTT Ken	Usher

## **ANNEXURE 4**

### **INFORMATION TECHNOLOGY**

The provision of computing facilities and support was coordinated by the Legal Systems team of the Ministry of Justice Information Technology Branch. Consultants, DMR Group, were engaged to assist in defining the requirements, designing the facilities, and providing ongoing support.

The following systems were designed and implemented after discussions with the Commissioner, Counsel Assisting, Investigators, Records Manager, Administrative and support staff.

**I. Word processing**

**II Spreadsheets**

**III Records Management - specifications**

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- key details and content summaries for all records
- storage location of records
- free text and structured/form based searching
- ability to copy details from records to word processing

**IV. Transcript Management - specifications**

- database of transcripts in same format as hardcopy
- all transcript to be available within 1<sup>1</sup>/<sub>2</sub> hours
- standard indexing for locating records
- free text and structured/forms based searching
- copying extracts of transcript to word processing
- annotation of transcript pages
- production of exhibits listing
- allocation of pages to different categories
- facility to maintain copy of database on portable computers

**V Transcripts distribution and archiving**

**V Witness Statements database**

I.

**V Statutes database**

II

**V Assets register**

III

**I Electronic Mail**

X

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On site support was provided by DMR Group on a continuing basis for the term of the Commission.

The computing hardware and software available for use within the Commission included:

### **HARDWARE**

- 2 Fujitech Pentium 100 network servers, 5 Epson EPL5200 laser printers, 10 Osborne Pentium 75 desktop personal computers, 4 Toshiba T2400C notebook personal computers, 1 synoptics 16 port network hub and 1 synoptics 8 port hub, and 1 lipsonic 2KVA Uninterruptable Power Supply.

### **SYSTEM SOFTWARE**

- Microsoft DOS 6.2, Microsoft Windows 3.1, Novell Netware 3.12, McAfee Virus Scan 9.3v 220 and Arc Serve Backup utility.

### **APPLICATION SOFTWARE**

- MS office 4.2 (Microsoft Word 6.0 Microsoft Excel 5.0 Microsoft Powerpoint 4.0), Lotus Notes Chart 3.3, Lotus Notes Server 3.3, Mavis Beacon Typing Tutor, Records Management System 1.0, Transcript Management System 1.0 and Z merge 4.1

## **ANNEXURE 5**

### **RECORDING AND TRANSCRIPTION SERVICES**

Recording and transcription services were provided to the Commission by Spark and Cannon Pty Ltd. The process involved recording the hearings on two audio tapes, one of which was kept as a permanent record of proceedings. The second was used to produce hard copy and computer disk versions of the transcript. This allowed the Commissioner and Counsel Assisting to have access to transcript within one and half hours of the evidence being given.

Public versions were made available at a cost of \$1.50 per page, up to a maximum cost of \$75 per day for hard copy and \$60 for each day's evidence on disk (Word for Windows and ASCII formats). These rates were the same as charged by the Royal Commission Into Commercial Activities of Government and other Matters.

A hard copy of the transcript was provided for viewing by the public and the media within the precincts of the Commission.

Revenue from the sale of transcript totalled \$20,854.

## **ANNEXURE 6**

### **RECORDS MANAGEMENT**

All documents received or generated by the Commission were securely managed in accordance with Library and Information Service of Western Australia guidelines.

Records were classified as either administrative or functional. Administrative records were those relating to the day to day management of the Commission. A file was created for each key administrative area. Functional records were those relating to the Terms of Reference of the Commission. Each record was allocated a reference number and given a short identifying description. Details of the source, the type of record, the date on which it was received, any related record and the storage location were also recorded.

All this information was stored on a computerised records management system which was designed to enable easy access and ready retrieval.

## **ANNEXURE 7**

### **THE MEDIA**

Media interest in the Commission was high. On one occasion 100 journalist, photographers and camera operators attended.

Facilities were allocated to the media before public hearings commenced.

In the main hearing room 11 of the 30 seats were allocated to television, radio and newspaper journalists. Usually the seats were filled by organisations which covered the Commission each day - four television channels, two radio stations and five newspapers.

Journalists often chose to sit and watch proceedings on a television monitor located in the media room where desks and chairs were provided. Some media organisations installed telephones from sockets provided and one newspaper installed a computer terminal.

The Commission also allowed journalists to use tape recorders in the media room as an aid to note taking on condition that recordings were not to be used for broadcast.

The organisations which attended and the principal reporters at the hearings were as follows:

<b><i>The West Australian</i></b>	Grace Meertens, Brendan Nicholson, Malcolm Queckett, Tony Barrass, Margot Lang, Anne Burns
<b><i>The Australian</i></b>	Mark Irving, Colleen Egan, Jamie Walker, Frank Devine
<b><i>Australian Associated Press</i></b>	Judy Hughes
<b><i>The Age</i></b>	Duncan Graham, Bill Birnbauer, Michelle Grattan
<b><i>News Limited</i></b>	Mark Russell
<b><i>Sydney Morning Herald</i></b>	Paul McGeough

<b><i>Financial Review</i></b>	Kathryn Bice, Jenny Hewett
<b><i>Sunday Times</i></b>	Janet Wainwright, Peter Laud

<b>Canberra Times</b>	Aban Contractor
<b>Melbourne Herald Sun</b>	Jan Mayman
<b>The 7.30 Report</b>	Alan Carpenter, Stephanie Clerk, Guy Bevilacqua, Paul Lyneham
<b>ABC Television News</b>	Joanna Menagh
<b>Channel 7</b>	Mara Pritchard, Reece Whitby, Neill Stanbury
<b>Channel 9</b>	Gary Adshead
<b>Channel 10</b>	Doug Cunningham, Jamie McNabe, Simon Dowding, Paul Bongiorno, Brian Seymour
<b>SBS</b>	Janelle Provis
<b>A Current Affair</b>	Warwick Adderley, Ray Martin
<b>Sydney Telegraph</b>	Piers Ackerman
<b>ABC Radio</b>	Adrienne Lowth, Felicity Davey, Sue Short, Renee Elliss, John McNamara
<b>ABC Radio Current Affairs</b>	Ross Solly
<b>Radio MMM</b>	Robert Haywood
<b>6PR</b>	Gemma Tognini
<b>Post Newspapers</b>	George Williams, Alva McNicol

**ANNEXURE 8**

**CORRESPONDENCE WITH MR A J HASTINGS,  
CLERK OF THE JOURNALS,  
HOUSE OF COMMONS, LONDON**

## **ANNEXURE 9**

# **THE EXPLANATORY STATEMENT**

