

1994

Past as prologue : the Royal Commission into Commercial Activities of Government and Other Matters : proceedings from a conference on the Part II Report of the Royal Commission and the reform of government in Western Australia

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Brogan, M., & Phillips, H. (1994). *Past as prologue : the Royal Commission into Commercial Activities of Government and Other Matters : proceedings from a conference on the Part II Report of the Royal Commission and the reform of government in Western Australia*. Mount Lawley, Australia: SASTEC, Adith Cowan University.

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NOVEMBER 5 1994

WA INC - THE AFTERMATH

Don't go too far with the shackles: expert

REPORTS BY GRACE MEERTENS

AUSTRALIANS should accept some political corruption rather than take post-WA Inc reform shackles. "I suggest Australians would agree that it would be preferable to a limited amount of corruption."

Past as Prologue:

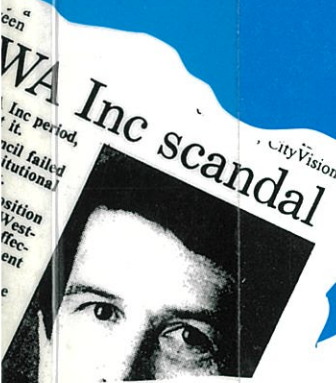
THE ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT AND OTHER MATTERS

Proceedings from a conference on the Part II Report of the Royal Commission and the reform of government in Western Australia

Edited by Mark Brogan and Harry Phillips



EDITH COWAN UNIVERSITY
PERTH WESTERN AUSTRALIA



WA Inc scandal
Inc period, it failed institutional position West-ecent

Court attacking WA Inc critic Premier defends system

BY MALCOLM QUEKETT AND GRACE MEERTENS

PREMIER Richard Court has rejected criticism of his Government's record on political reform by two prominent WA Inc opponents, saying there is no way...

WA Inc years are simply missing the plot," he said.

"It doesn't matter what system of government you have in place. If people want to change it, they will find a way."

sector management with calls for wider...



corruption accept risk the consequences of a society based on authoritarian rule," he said.

"It is important to ask how many layers of oversight and legal penalties we can realistically have to limit corruption and still fall well short of repression and authoritarian rule."

But he criticised the Court Government for moving at a snail's pace, if at all, in implementing the WA royal commission's recommendations, especially those to reform...

The Government has expanded the Official Corruption Commission along the lines dismissed by the royal commission as too narrow — contrary to royal commission recommendations that it be scrapped and replaced with a more powerful body. The royal commission said the public sector standards commissioner must be independent of government and answerable directly to Parliament. But under the Government's any standard set by the commissioner for public sector standards. Mr Court said yesterday most West Australians supported his Government's approach. "When you are talking about changes to the system of government, of course, you are going to have public debate," he said.

Past as Prologue:

The Royal Commission into Commercial Activities of Government and Other Matters

Proceedings from a conference on the Part II Report
of the Royal Commission and the reform of
government in Western Australia.

*Edited by Mark Brogan and
Harry Phillips*

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PERTH WESTERN AUSTRALIA

Perth International Hotel,
4 November 1994

The Royal Commission into the Commercial Activities of Government and Other Matters was appointed by the Lawrence Government on the 8th January 1991. The Commission concluded its work in November 1992, producing two major reports on the conduct of government in Western Australia between 1983 and 1989. In the second of these reports, the Commission made forty separate recommendations for the reform of Western Australian Government, to be implemented by a Commission on Government.

This conference examines the legacy of the Royal Commission, the work of the Commission on Government and issues in the reform or 're-invention' of government. The conference concludes with presentations from the current generation of political decision makers on the reforming of government and the role of the media in the work of the Royal Commission.

Published by SASTEC (2 Bradford St, Mount Lawley, Western Australia, 6050) in cooperation with the Departments of Library and Information Science and Social Sciences, Edith Cowan University.

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ISBN 0-7298-0198-5

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PREFACE

In the wake of the Royal Commission Part Two Report and run up to the 1993 State election, I penned a letter to the Editor of *The West Australian* newspaper about prospects for the reform of government arising from the imbroglio of 'WA Inc'. Unabashedly pessimistic in sentiment, the letter drew substantially upon that great work of political allegory- George Orwell's *Animal Farm*. The idea of a Conference which examined the legacy of the Part Two Report and might accomplish something more positive, namely, provide a stimulus to the reform process, had its genesis around this time. I wrote to Associate Professor Harry Phillips in the Department of Social Sciences explaining the idea.

In co-operation with Harry and Professor Geoffery Bolton, the Conference developed over the ensuing year with formalisation of the programme in June, 1994. The Conference Committee agreed that in as much as possible, the holding of the Conference should await formal appointment of the Commission on Government. Allowing for appointment of the Commission, the Committee decided that the second anniversary of the Part Two Report, due in November 1994, afforded the best opportunity for a Conference of this kind. Perhaps fortuitously, rather than by intent, the appointment of the Commissioners coincided with the Conference proper, providing for a highly successful Conference and the first opportunity for West Australians to gain an insight into how the Commission on Government ('the child of the Part Two Report') would go about its job.

Given the difficulties in putting together a programme of this kind, involving key thinkers and participants, the enthusiasm of others for the project was vital to its success. In this respect, the enthusiasm of Associate Professor Harry Phillips (co-editor for these proceedings) and Professor Geoffrey Bolton from Edith Cowan University's Department of Social Sciences was outstanding. In the Department of Library and Information Science (LISC), valuable encouragement was similarly offered by Karen Anderson, Vicky Wilson and Department Chairperson, Marie Wilson. A special thanks is also due to the staff of SASTEC (Roger Vella Bonavita, Kay Noble, Yvette Drager and Stephanie Moir) for their work on Conference organisation. During the various stages of Conference planning, it had not been intended to produce formal proceedings for the Conference. The emergence of these papers (as presented with only minor editorial corrections) reflects the tremendous public interest generated by the Conference. In no small measure can this be attributed to the quality of presentations made at the Conference and it is to our speakers that I extend on behalf of Harry, Geoff and myself, a final vote of thanks.

Mark Brogan
LISC
Edith Cowan University
25 November, 1994

**AN INTRODUCTORY ESSAY TO THE SECOND ANNIVERSARY
REFLECTION OF THE SECOND REPORT OF THE ROYAL
COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT
AND OTHER MATTERS IN WESTERN AUSTRALIA.**

**Dr Harry Phillips,
Associate Professor of Politics,
Edith Cowan University.**

The Establishment of the Royal Commission

The Royal Commission into the Commercial Activities of Government and Other Matters, popularly referred to as the W.A Inc. Royal Commission, unfolded into one of the most dramatic events in the State's political history. It provided the citizens of Western Australia with two most comprehensive public reports on the operations of government and a suggested reform framework. In addition a confidential report was provided for referral to the Independent Public Prosecutor. In the wake of constant agitation, particularly from the Opposition, members of a high profile group 'The People for Fair and Open Government' and a reference from the Deputy Ombudsman, Premier Carmen Lawrence had foreshadowed the inquiry on 19 November 1991.

The Governor, Sir Francis Burt, formally issued a Commission on 8 January 1992 to Justice Geoffrey Kennedy, of the Supreme Court of Western Australia, Sir Ronald Wilson, formerly of the High Court of Australia, and Mr Peter Brinsden, retired Judge of the Supreme Court of Western Australia. They were to inquire and report on whether there had been corruption, illegal conduct, or improper conduct by any person or corporation in the affairs, investment decision and business dealings of the Government of Western Australia or its agencies, instrumentalities and corporations in respect of twelve matters listed in an accompanying schedule and dating as far back as 1977 in the case of financial assistance by government to Bunbury Foods Proprietary Limited (see Appendix One).

The original reporting date for the Commission, allocated a six million dollar budget, was to be January 1992. However, the Commissioners were required to seek extensions of time as after nine months they had completed hearings in only three areas namely; the Fremantle Gas and Coke sale, the Northern Mining Diamond Deal and the Burswood Casino Licence. In the second half of 1991 the huge Rothwell's inquiry and its companion aspects, the Kwinana petrochemical project, the Bell share deal and the St. George's Terrace land sales had dominated the inquiry. Still to be considered were the sales agreements for the purchase of natural gas from the North West Shelf Joint Venturers, and the Teachers Credit Society and Swan Building Society rescues as well as allegations of bribery concerning planning decisions of the Stirling City Council for Observation city and the adequacy of the subsequent police investigation. The Commissioners had to abandon their original plan of hearing most evidence together. They commenced dual hearings in mid-November 1992 and moved into three simultaneous hearings in December.

On each of the terms of reference the Commissioners were to report whether 'any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings' or whether 'changes in the law of the State, or in administrative or decision-making procedures (were) necessary or desirable in the public interest'. With regard to the latter the first official indication of some of the matters being considered for inclusion in the final set of recommendations were published in a discussion paper in late November 1992. The paper identified open government, accountability, integrity, ethical supervision of the public sector and government involvement in commerce as issues central to the structure and operation of government. Within this framework, in the context of intense media

and community interest in the deliberations of the Commission, the public were invited to make submissions.

In all there were some 525 separate witnesses including four former Premiers, 17 other Ministers of departments and many others who had served on government instrumentalities, boards and commissions. Frequently the evidence created headlines and sometimes observers heard theories of modern government. In conclusion, the Royal Commissioners, after making a critical reference to former Deputy Premier David Parker's assertion that modern government's seek 'to live by concealment', contended (Part One, Vol. 6, 27.2.13):

If public confidence in our institutions of government is to be restored and maintained, if government is to warrant the public's confidence and not its suspicion, a systematic reappraisal of our institutions, laws and practices is called for.

Report of the Royal Commission Part One

The six volume 2000 page Part One of the Report was delivered to the Governor on 19 October 1992 and tabled in Parliament on the following day. In one paragraph (Part One, Vol. 6, 27.2), which typified the forthright language of the Report, the Royal Commissioners stated;

The government system of this state exists to serve the interests of the people of Western Australia. Our findings and observations provide compelling evidence that this fundamental purpose has not always been uppermost in the minds of our elected and appointed public officials, in some instances far from it. They equally demonstrate that the present institutional arrangements for the conduct of government cannot be relied upon either to ensure that government will be conducted for the public's benefit or to provide reassurance to the public that it is being so conducted.

One immediate shock was Premier Lawrence's announcement that Environment Minister, Bob Pearce, would stand down from the Ministry and vacate his parliamentary seat after the forthcoming election: the Commissioners had concluded that Pearce along with Premier Brian Burke had acted improperly in making public confidential information concerning funds deposited with the Teacher's Credit Society by Keith Wilson, the incumbent Liberal Party President.

The Royal Commissioners (Part One, Vol.9, 9.49-50) did concede the words improper conduct 'are chameleon like their meaning varying with circumstances'. Nevertheless a consensus emerged 'at least in the context of the Public Service that improper conduct would be established where there was a gross departure from those standards of public administration the public are entitled to expect and which is otherwise inexplicable' (see also Part One, Vol.1, 1.6.57-58). Findings of improper conduct in these terms were made against former Premiers Brian Burke and Peter Dowding, as well as other senior ministers including, in addition to Pearce, David Parker and Julian Grill. The latter, for his part, strongly attacked the conduct of the Commission.

In their 'General evaluation', the Royal Commissioners observed inter alia that; (Part One, Vol 6, 27.2,1-13);

- *ministers have elevated personal and party advantages over their constitutional obligation to act in the community's interests;*
- *the personal associations (of some ministers) and the manner in which electoral contributions were obtained only create the public perception that favour could be bought, that favour would be done;*
- *members of statutory authorities with very significant funds subject to their control seemed to be unaware of, or else indifferent to, their legal and public duties;*

- *in many instances the capacity of statutory instrumentalities to act in the discharge of their statutory obligations was severely constrained by the presence on their boards of public servants who represented government;*
- *the processes of decision making, but more importantly the very reasons for decision in many matters inquired into, were often shrouded in mystery.*
- *the absence of effective public record keeping has dogged this commission in its inquiries. Records provide the indispensable chronicle of a government's stewardship. They are the first defence against concealment and deception.*
- *the practice of government, especially in its business relationships, changed markedly during the Burke years.... Effective accountability was a casualty of its entrepreneurial zeal. Influence in the conduct of this State's public affairs was captured by a small group of self-interested businessmen.*
- *impropriety of considerable proportions occurred in the period into which we have inquired.*

By far the longest section of the Report related to the original Rothwell's rescue at the end of 1987 and the subsequent abortive attempt to establish a petrochemical complex at Kwinana. In the closing section on this term of reference the Commissioner's (Part One, Vol. 5, 21.1.153) remarked;

Ultimately, however, Mr Burke and Mr Dowding must accept the responsibility for distressing episode in the history of Government in this State.... Unfortunately, when leadership was called for, none was shown. When the public demanded openness, the truth was concealed from it'.

Report of the Royal Commission : Part Two

Delivered on 12 November 1992, Part Two of the Royal Commission Report provided the framework for certain reforms in the system of government and various administrative decision making procedures. The Commissioners concluded (Part Two, 1.1.31) they had identified:

fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the executive fulfils its basic responsibility to serve the public interest.

The forty recommendations (see Appendix Two) to help overcome 'the deficiencies' of government embraced:

- *a review of the role, powers and electoral law for both houses of Parliament;*
- *new codes of conduct for government ministers, public officials, ministerial advisers and press secretaries;*
- *the establishment of a Commission for the Investigation of Corrupt and Improper Conduct and the creation of a Commissioner for Public Sector Standards;*
- *the provision of protection for public servants who 'blow the whistle' on corrupt practices;*
- *an overhaul of secrecy and criminal laws and the Public Service Act together with the Freedom of Information Act which satisfied exacting criteria;*
- *new laws to govern political donations and enforce disclosure of MP's financial interests;*
- *amendments to the Financial Administration and Audit Act and better reporting procedures to the Auditor General;*

Parliament to be given overriding authority in the scrutiny of government activities, with the Legislative Council acting as a House of Review, and distanced from the Executive by debarring its members from holding ministerial office.

The Commission on Government

To oversee the recommendations the Commissioners recommended the establishment 'by legislation and without delay' of an umbrella body, a Commission on Government (COG), modelled in large measure on the Administrative Review Commission of Queensland. However, the Lawrence Government's attempt to pursue this course of action was forestalled when the enabling bill was referred by the Legislative Council to its Standing Committee on Legislation. When Parliament was prorogued on 16 December 1992, the Government announced that it would move instead to establish the Commission by Executive action. Expressions of interest, to be directed to the Premier, were sought in nationwide advertisements for membership of the Commission, only for Cabinet to decide, in the absence of cooperation from the Coalition, not to proceed further until Parliamentary approval could be obtained.

Notwithstanding the Commissioner's recommendation that the COG should be set up as a matter of urgency it was not until 8 July 1993 that Premier Court introduced the second reading into the Legislative Assembly and it was not debated again until December. After the summer recess the bill reached the Legislative Council in March 1994 with attention focussed on the provisions of Clause 5a specifying that the COG was to inquire into the matters listed in the schedule (and including the electoral system for each of the two houses) 'in the manner and to the extent that the Commission believes is warranted having regard to the prevention of corruption, illegality or impropriety by or involving public officials'. Although the bill was referred to the Legislative Council's Legislation Committee, which recommended a broadening of the scope of Clause 5a, the legislation was passed in its original form.

As recommended in Part Two of the Royal Commission Report a Joint Select Committee was established by the Parliament to monitor and review the work of the Commission. The Legislative Council members from the governing Coalition were Barry House, Murray Montgomery and Murray Nixon with John Cowdell and Mark Nevill from the Labor Opposition. In the Legislative Assembly there was a surprise when Speaker Jim Clarko was chosen as Chairman, together with Ian Osborne and Max Trenordan from the Coalition. The Labor members were Dr Geoff Gallop and Larry Graham. The Legislative Council members had been appointed on 16 August 1994 while members from the Legislative Assembly were elected one day later.

Premier Court in a surprise response to a question without notice on 13 September 1994 from Dr Geoff Gallop, Opposition Accountability Spokesperson, nominated the members of the COG without the mode of consultation with the Leader of the Opposition which had been implied in the Royal Commissioner's Report and the COG Act. This announcement had been preceded by a newspaper advertisement seeking expressions of interest for full or part-time membership of the Commission. Significantly Jack Gregor, named as the full time Chairperson of the five member Commission, did not have the qualifications in constitutional and administrative law as had been recommended by the Royal Commission. Other members of the Commission, who like Gregor, had their appointments duly ratified by the Joint Select Committee, were Murdoch University lecturer Dr Frank Harman, University of Western Australia Associate Professor of Politics Campbell Sharman, former Perth City Town Clerk Reg Dawson and well known media personality Ann Conti.

As Jack Gregor had not had a high profile his preparedness to make his first public address concerning his role as the full time Chairperson of the COG at the Edith Cowan Conference on 4 November 1994, marking the Second Anniversary of Part Two of the Royal Commission Report, was an important event. It was learnt that

Gregor had been awarded a Perth Technical College Diploma in Public Administration and an Associateship in Public Administration from Curtin University. He had also undertaken studies at the International Institute of Labour Studies in Geneva. Later on assignment to Kuwait with the United Nations he worked on a new national plan for that country. Gregor, from 1960, had a long period of employment with the public service before joining the Western Australian Employers' Federation, first as an Industrial Officer and later as a member of its Executive Management. During this period he undertook military service and was commissioned as an infantry officer. In 1985 Gregor was appointed as a Commissioner of the Western Australian Industrial Commission and in 1990, he was the first Commissioner to receive a dual appointment to the Commonwealth Industrial Relations Commission.

In his address to the conference Gregor indicated that he was keen to witness the formulation of reforms which would 'stand up to the twenty first century'. Despite the reservations expressed in Parliament, and the media, The Commissioner did not see the terms of reference as restrictive. Gregor even placed a positive construction on the much criticised delay of the creation of the COG. In his judgement there had been time for reflection which would enable the avoidance of problems such as those which had emerged in New South Wales with the newly established Independent Commission Against Corruption (ICAC), with Ian Temby Q.C. as the inaugural Commissioner. Gregor, too, recognised the challenges ahead but confirmed his independence and a preparedness to seek submissions from the public to help ensure the success of his mission. At hand would be the Edith Cowan University Conference papers delivered by an eminent body of thinkers on the floor of the Perth International Hotel. The resultant discussions and media comment have provided Gregor and his Commissioners with a library for the COG deliberations.

The Papers Program.

The Conference was opened by Professor Roy Lourens, the Vice Chancellor of Edith Cowan University. Given his earlier career in auditing he was able to identify one of the main themes for the day's deliberations. As Lourens warned 'one of the lessons of auditing is that a deterioration of information and ethical behaviour sets in over time when executive actions are not exposed to independent scrutiny and accountability'. One of the tasks of the Conference, as Lourens recognised, was to 'test how we can sensibly go about improving the accountability of our public life'.

In posing the question why the excesses of WA Inc. were not exposed at an earlier juncture Professor Lourens suggested that renowned historian Professor Bolton 'is right in saying wherever the real blame lies, academics must accept some of the blame too. Few of us can walk away from this episode feeling that we had done all that could, and should, have been done. In one sense, this Conference is to revisit issues which we failed to properly visit in the first place'.

As a record of this revisit the papers delivered at the Conference have been collated for this publication. Readers will choose to study in more detail the content of each address. Members of the press gallery, who attended the Conference in force, have already been responsible for providing wide publicity to many of the highlights. Their response indicated that political reform in Western Australia was a matter of keen public concern. Was the Court government, as *The Western Australian* newspaper editorial (7/11/1994) asserted, 'lying doggo on reform'?

To deliver the keynote address, with the advantage of being able to call on his Western Australian heritage, Ian Temby Q.C. was able to offer circumspect advice as he had, for five years from 1988 to 1994, been the ICAC Commissioner in New South Wales. In his judgement the ICAC had achieved a great deal including increased confidence in the public sector, more integrity in public life and substantial systemic change. Unfortunately, as he conceded, the achievements had been clouded in controversy. Nevertheless Temby proposed a similar permanent independent body in Western Australia to replace royal commissions of inquiry. This body would be

more effective and cheaper than royal commissions, which took time `and had a chilling effect on the government process'.

Another need recognised by Temby was for a code of conduct to be instigated for MPs in Australia. It was a reminder that the Report of the Parliamentary Standards Committee, which was tabled in 1989, urged that the Western Australian Parliament `give consideration to adopting the Code of Conduct' which had been formulated. Temby suggested an independent body to investigate people's suitability to hold public office and report to Parliament, which would decide on appointments. Reference in his speech were also made for an induction program for new Members, `to help ensure that they understand their role and do the right thing'. In addition it was suggested `that the oath of allegiance have added to it an oath of office, analogous to that taken by new judges, by which Members of Parliament promise to do the right thing by all manner of people without fear of favour, affection or ill-will'.

According to Temby, `corruption, viewed simply, is the abuse of public power for private ends'. He paraphrased Lord Acton and said `the greater the power, the greater the capacity for abuse'. `It is therefore not surprising', said Temby, `that the ICAC should have directed its attention to those who hold high political office. As successful politicians are not famed for their meekness, it is equally surprising that they should have resented and resisted those attentions, and turned their wrath upon the ICAC'. But as Temby also observed `one should not be too despondent about the reaction of those holding elected office to the ICAC. Reactions in other places have been broadly similar. In Western Australia, the recommendations of the Royal Commission into the Commercial Activities of Government were received with a marked lack of enthusiasm, implementation has been slow and partial, and the desire of Government to make itself and its successors more accountable has been less than wildly enthusiastic'.

Mr Michael Barker, who was one of the Counsel engaged by the Royal Commission to assist in the preparation of the Royal Commission Report, was dismissive of earlier `ridiculous' claims by the National Party Leader and Deputy Premier, Hendy Cowan, that the Commissioners did not write Part Two of the Report and furthermore only had a few days to consider it before it was published. Barker was critical of the manner in which Premier Court had `intentionally desired to limit the likely effectiveness of COG in the performance of its functions'. Recognising that the COG was based on similar lines to Queensland's Electoral and Administrative Review Commission, Barker was forced to lament that the COG `is certainly not, at birth, the child the Royal Commission had thought it conceived'.

Barker explained that for Part Two of the Report the `democratic principle' and `trust principle' had been central in formulating the reordering of political power to enhance the Parliament and check the Cabinet. In this respect Barker was `withering' in his criticism of those who had argued that `fair' electoral laws were not integral to this exercise. Barker, too, expressed `astonishment' that new political finance laws for elections had not yet been enacted. Another matter given focus by Barker was the Court government's action in shelving the Royal Commission recommendation for the creation of a Commission for the Investigation of Corrupt and Improper Conduct (CICIC). In its place more powers had been given to the existing Official Corruption Commission but this was described as `merely a pale imitation' of CICIC.

Several of the Royal Commissioner's suggestions by which Parliament attempts to hold the Executive to account were also recalled by Barker. The mechanisms said to require overhaul were question time, the committee system and debate on legislative measures. A more fundamental change, highlighted by Barker, was the `politics of review' rather than the `politics of government' function which the Royal Commissioner's proposed for the Legislative Council. The upper house elected by proportional representation, should develop a strong committee system and be responsible for the systematic oversight and review of the public sector. Moreover,

members of the Council should, in principle be prevented from holding ministerial office and the Council should not have the power to block supply.

'Parliament', said Barker, 'must be made to work. The question is how. The Royal Commission's suggestions are plain enough, hardly utopian, but (as we have seen) susceptible to crude attacks from those in established political parties who strive only for one thing-power.' This led Barker to support the Commission's view (Part Two, 5.2.1) that 'the causes of decline in the effectiveness and reputation of the legislature in Westminster systems are well understood. They lie chiefly in the dominance of party machines in the work of elected representatives'.

Professor Peter Boyce, who also assisted the preparation of the Royal Commission Report, also directed attention in his paper 'Accountability and the Reform Agenda' to why Westminster derived political systems are failing to uphold the principle of accountability. In fact Boyce found himself in some agreement with the submission to the Commission by the Royal Australian Institute of Administration 'that the Westminster system is not the solution to WA's problems; it is apart of the problem'. He also remarked 'the unpleasant fact is that no government feels very comfortable with the full requirements of accountability and no government wants a parliamentary system in which the executive does not control the numbers'.

Although Boyce shared the Royal Commissioner's enthusiasm 'for the ideal of a strong system of bipartisan investigative and monitoring committees' he had grave doubts about this being achieved in small Westminster-style parliaments. One critical aspect of the Report, namely the proposal to convert the Legislative Council to a genuine house of review was most significant. Unfortunately Boyce could 'see little prospect of the present government allowing such change to occur', although he hoped the COG would pursue this reform. This task may have been made easier if the Royal Commission 'had been a little more sensitive to the likely reactions of the major political parties to one of their key recommendations, a reform of the electoral system....'

Conscious of the broad terms of reference, the extraordinarily 'tight time frame', the mounting costs and the increasing impatience of the government heading for an election, Boyce was nevertheless disappointed that the Royal Commissioners were reluctant to tread the reform path of a revision of the Western Australian Constitution. Unfortunately the document 'is an unintelligible, untidy assortment of colonial documents' which remain 'silent on several key aspects of the operation of responsible government'. Given that the public knows so little of the essential features of the Westminster system 'they are unlikely to know how the processes of accountability should be played out'.

One contentious item, sometimes contemplated but rarely articulated in public, was the preparedness of Boyce to address the different sorts of expertise required for the two parts of the Royal Commission report. It was asserted that the first inquiry belonged exclusively to legal counsel and members of the judiciary but the second 'required an admixture of constitutional legal expertise and an understanding of political processes, especially the conventions of responsible government'. In Boyce's view 'neither the legal consultants nor the Royal Commissioners seemed entirely comfortable in confronting issues of political process, especially those relating to ambiguous or contested conventions of ministerial responsibility. The sphere of statutes, regulations, codes and tribunals, where authority is specific and enforceable, seemed more to their liking'. Not surprisingly this sparked a response from Michael Barker who later returned to the podium to state, 'I publicly reject unequivocally what Professor Boyce said. I reject the idea that there was some peculiar legal takeover and mind set'.

Barry McKinnon, as a trained accountant, was neither a lawyer nor a political scientist, but was the Leader or Deputy leader of the Opposition throughout much of the WA Inc. period. As a campaigner for the Royal Commission he placed much of the blame for the abuses of WA Inc. on the key actors in government. The ends

justified the means by those 'motivated by power'. It was conceded by McKinnon that divisions within the Liberal Party and an absence of a Coalition with the National Party Opposition had weakened Parliament's capacity to bring the Burke and Dowding Government's to brook. He called for a reduction of ministers in the Legislative Council to help strengthen the upper house role as a watchdog on government.

McKinnon, after noting the breadth of attention devoted in Part Two of the Report to extending the powers of the Auditor General, was critical of the lack action concerning this office. Similar views were expressed on the scope of the Ombudsman's jurisdiction. He was also critical of the continued absence of disclosure legislation for party election funding. In a confession that he had changed his views as a product of his experiences in Parliament he foresaw the need to introduce public funding for elections as had taken place for New South Wales and Commonwealth Parliament elections. Nevertheless he did not believe that vote weighting, a characteristic of the Western Australian electoral landscape, had contributed to corruption. McKinnon expressed his support for the weighting principle and in a direct challenge to Michael Barker (and later Dr Geoff Gallop and Jim McGinty) contended electoral reform is not as important as some people say as 'a break or accelerator' on the nature of the body politic.

One of most learned critics of the historic vote weighting in Western Australia has been the Labor Party Deputy Leader Dr Geoff Gallop. He delivered a Conference Paper titled 'The High Court and Electoral Reform in Western Australia'. Gallop recalled that even in 1900 when the Commonwealth Constitution Bill was debated in the House of Commons an Irish MP had argued that a condition of entry of Western Australia into the federation should be 'full and fair representation' in the local Parliament.

Given the recognition that there had been a change in judicial thinking since the Labor Party had unsuccessfully sought to reform the electoral system by judicial review in 1982 a decision was made to try again in the High Court rather than the State Supreme Court. Gallop referred to 'the constitutional entrenchment of the doctrine of representative government and the implied rights which follow from it, the spreading of the net of implications to State as well as Commonwealth laws, and the growing importance of international conventions and standards in constitutional interpretation'. In each instance Gallop provided authoritative evidence. However, the question remains as to how the High Court will respond. An affirmative decision for Labor would bring changes in representation similar in scale to that which the House of Representatives experienced in the USA in the 1960s after the Supreme Court determined that 'equal representation of equal numbers of people' was a 'fundamental goal'.

Electoral matters were also central to Dr Ian Alexander's paper 'Independent Voices: The Two Party System, WA Inc. and Electoral Reform'. Alexander who was the State Member for Perth from 1987 to 1993, resigned from the ALP in 1991 after becoming disillusioned with the performance of his party during the WA Inc. years 'when by-passing Parliament was something of an art form'. Now, thought Alexander, 'it is time to put the Royal Commission agenda back in the urgent basket'. A remedy suggested by Alexander was a change to the Constitution so that major financial decisions including all major capital items under the budget and by statutory and semi-government authorities be made subject to Parliamentary debate and approval. Parliamentary reform was necessary to avoid the situation where the Cabinet and Executive of the day can either dominate 'both Houses of Parliament or even bypass a potentially hostile Parliament. Importantly, too, Alexander argued in a similar vein to the Royal Commission by urging the adoption of proportional representation and multi-member electorates for not only the Legislative Assembly but also the Legislative Council 'as this would lead to a Parliament more representative of the plurality of views in the community....'

Parliamentary accountability in a federal system, a responsive public service, public sector ethics together with ministers and their advisers, rather than electoral systems, were the focus of Alan Peachment's analysis his paper 'WA Inc: Failure of the System or Crime of the Employer?' Although critical of the Court government for its reticence in implementing key recommendations of the Royal Commission Peachment cautioned about the consequences of carrying the reform agenda so far as to shackle government or threaten individual freedoms.

Research evidence which Peachment presented to the forum was widely reported in the press. In a 1991 survey when Dr Carmen Lawrence was Premier public servants had indicated that the infusion of ministerial advisers that had occurred from the beginning of the Burke regime did major political damage as it was believed that the new breed were poorly inducted and trained and lacking in standards of probity. Significantly a recent finding revealed that public servants believed ethical standards have deteriorated since the Court Government came to office. In addition it was found that 75 per cent of those surveyed believed there was a low awareness of the existing code of conduct

Dr Michael Wood, during his term as the Public Service Commissioner, had issued guidelines for behaviour of public servants in 1988. Though they applied only to staff employed under the Public Service Act the Commissioner had hoped they would be taken into account across the public sector. In presenting an excellent summary of the Royal Commission's guidelines for public sector reform Wood recognised that the prospects of ministerial responsibility matching the Westminster model ideals were made more difficult by complex legal-financial arrangements of the federal system. Moreover Cabinet's role as the link (or 'efficient secret' as Bagehot suggested) between the executive and legislative branches of government is being altered by the increasing prominence of the office of the Premier, the agencies supporting that office and the electioneering methods followed by political parties. Moreover the 'interdependence between government agencies and functions also makes it very difficult for individual Ministerial responsibility to have any meaning and the practice of delegating authority, a necessary step, tempts politicians to push down to others blame for errors'.

After canvassing public sector reforms in several Organisation for Economic Cooperation and Development [OECD] countries, and other Australian States, Wood contended, that Western Australia would have benefited by a major public service review to enable changing circumstances, particularly those pertinent to accountability, to be addressed. The former Public Service Board in 1985 and 1986 had initiated changes and senior officials from the Public Service Commission, Treasury and Department of Cabinet had proposed reforms in publications issued in 1992. The Public Service Commissioner had also made proposals for a new legislative framework in 1991 and 1992.

One matter addressed by Wood was the importance of record keeping to accountability. The Royal Commission Report in Part Two had recommended that the Auditor General be given access as of right to cabinet records for functions of his office and that the proposed state archives authority monitor compliance with standards set for record creation, maintenance and retention (Part Two, 4.2.11)

The nexus between executive accountability and public recordkeeping was further explored in a concurrent workshop presentation by Mark Brogan. He described how the reform agenda in information policy in the 1980's effectively by passed the important area of the life cycle management of public records, an omission which provided the essential context for the 'improper' practices in public recordkeeping identified by the Royal Commission. In the Royal Commission's view (Part Two, 4.3.1)

Such practices strike at the roots of responsible government. Whether intended or not, the result is a false or incomplete account of the stewardship of the Government. Proper record keeping and effective record security are essential to good public administration.

Developing his notion of the 'electronic white board' as a metaphor for changes in public recordkeeping taking place as a consequence of the increasing use of digital technologies, Brogah predicted a further decline in public sector accountability arising from the use of new technologies, an outcome attributable to the fact that computer based information systems are seldom designed to ensure evidence.

The extent to which Western Australian Government agencies are sensitive to issues in accountability arising from the use of new technologies in recordkeeping is the subject of a research project currently being undertaken by the Public Sector Electronic Recordkeeping Research Group at Edith Cowan University. Project Leader, and co-presenter Vicky Wilson, concluded the public recordkeeping presentation with a description of the research methodology of the Group and progress of the study to date.

The role of the Freedom of Information Act in facilitating openness in the process of decision-making and allowing scrutiny of decisions and actions by government was discussed by Karen Anderson. The Annual Report of the Office of the Freedom of Information Commissioner reveals that some 75% of requests received during the Act's first year of operation, concerned access to personal information. The less common "public interest" application of the Act, has been extensively investigated by the *West Australian*. With the aid of case studies based on the West's experience, Anderson explained issues in the public interest application of the Act, concluding that many problems encountered in gaining access to information through FOI arise not from obfuscation or avoidance, but rather from the often poor quality of records management in many public agencies, suggesting the need to raise the general standard of public sector records management.

Although the Westminster model of government is distinctive with its recognition of the Office of Leader of the Opposition, parliamentary procedure rarely provides such an incumbent with an opportunity to deliver policy statements. So it was not surprising that Jim McGinty, who had only been elected as Opposition Leader on 9 October 1994, chose the Conference to make his first major public address.

McGinty, after reminding listeners of some of Labor's achievements during the WA Inc. period, gave an assurance that the Labor Party in Western Australia embraced, without exception or qualification, all the recommendations of the Royal Commission in its new accountability package. It was argued the Second Report was an agenda for action not a topic for discussion which should be applauded as a blueprint for government of the future. 'Accountability', said McGinty, 'is now a mainstream political issue'.

The Legislative Council was to be given a central role in reviewing and scrutinising the management and operations of the public sector. To this end McGinty said the Council 'must gain the authority and legitimacy that can only come from electoral reform and proper realisation of the principle of proportional representation'. However, electoral reform was not enough as it was important that Parliament's accountability roles be enhanced by way of parliamentary committees, question time and executive scrutiny generally. More specifically McGinty indicated that Deputy Leader Geoff Gallop had prepared a package of measures for adoption which included equal numbers of Government and non-Government members on key Legislative Assembly committees, the establishment of the right of reply to brief Ministerial statements, the restoration of Private Member's time to at least four and a half hours per week, the extension of question time to 45 minutes, televising Parliament and more Parliamentary sitting days and less night sittings.

In contrast to normal parliamentary order Premier Richard Court was originally scheduled to follow the Leader of the Opposition to the podium. However, the Government's perspective was forcefully presented by the Hon. Peter Foss, MLC, the Minister for Health and Fair Trading. Foss asserted that 'what happened to our government in the 1980s stemmed simply from an inability or unwillingness on the

part of key individuals to judge right from wrong'. In his view nothing was wrong with the system and only 'some bad Labor apples spoiled the barrel'.

The criticism of the response to this approach probably surprised the Court government which, in the light of very good economic indices and successful debt reduction strategies, was achieving record approval poll ratings. *The West Australian* (7/11/1994) warned that the Premier and some members of his Cabinet 'are constructing a dangerous fantasy over what happened in the WA Inc. years and what should be done now to protect the State's system of government and its reputation'. Two days later *The West Australian* carried a front page headline 'Court Attacked by WA Inc. Critic'. Associate Professor Patrick O'Brien, given credit by Professor Lourens in his opening address to the Conference for blowing the whistle on WA Inc., was reported as stating:

Mr Foss's argument that the corruptions of WA Inc. were solely the result of individual immorality is not only self serving it is reminiscent of Maximilien Robespierre's claim on behalf of the Jacobins (of the 18th century French Revolution) that, because they were incorruptible, they could be trusted with absolute powers'.

Professor O'Brien then interpreted Minister Foss's pronouncements as suggestive of;

a high degree of political authoritarianism and end[ing] hopes that the Court Government might have acted as the party of genuine reform in WA. Rather, it is now the principal party of reaction.

Of course the Commission on Government is yet to table any of its reports and the Court-Cowan Coalition government has time to consider its legislative response to whatever recommendations may be forthcoming. The jury is still out on whether the Court Government has politically erred with its response to the Second Report. What role WA Inc. will play in the scheduled 1997 election will be fascinating for psephologists. In the opinion of some commentators, the Court Government's tardiness in its approach to the reform recommendations has already meant it may have lost the 'high moral ground' which the Royal Commission had inadvertently delivered to their side of politics.

The WA Inc. Royal Commission did bring politics to the people with an unprecedented air of drama. Alan Carpenter, the well known ABC television compere who reported daily on the Royal Commission sittings, told the conference that sections of the public were angry, bewildered and confused with the revelations. He said that 'it was mind boggling' that despite what had been documented about political donations in party politics, no legislation had yet been given assent by the Western Australian Parliament. Whether the coverage of the drama accorded too closely to Chomsky's notion of 'manufactured consent' was queried by Carpenter. Significantly, too, although Carpenter was the final (and most entertaining) speaker at the Conference, he was the first to raise questions about the fairness of the proceedings and the extent to which David Parker may have been damaged by hearsay evidence. As the anchor person for the local ABC 7:30 Report, Alan Carpenter will shoulder significant responsibility for conveying to the public the deliberations of COG.

The conference proceedings have provided an opportunity for a more complete and proper understanding of what the Royal Commission envisaged. Perhaps in two years it may be necessary to conduct a reflection of what the COG has delivered. Sections of the media and some members of the academic community have been criticised for failing to raise the 'alarm bells' over many of the W.A. Inc matters. 'Past as Prologue' has gone some way to re-establish academic involvement in public debate about arrangements for government in Western Australia, an involvement which its organiser's hope will grow as COG gets down to its formidable task.

WELCOME SPEECH

Professor Roy Lourens
Vice-Chancellor,
Edith Cowan University

Welcome to this timely Conference on the Royal Commission into Commercial Activities of Government and Other Matters.

It is now almost exactly two years since Part II of the Report of the Commission was presented to the Governor of Western Australia. The three Royal Commissioners concerned, Sir Ronald Wilson, Peter Brinsden and Chairman Geoffrey Kennedy, worked long and hard on their enquiries and conclusions.

The Commissioners covered a wide range of topics. In Part II of their Report, they made some 40 recommendations, after concluding that there were "*fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the executive fulfils its basic responsibility to serve the public interest*".

It is a salutary reminder that the heady days of W.A. Boom were followed by the retribution of W.A. Inc. losses in excess of \$1 billion, and the emotional responses of the time.

Now, two years on, perhaps sadder and wiser, is a good time to reflect on these matters, and to place them into a wider perspective. Western Australia was not the only state to experience these problems. Lessons have been learned elsewhere too. Conclusions and recommendations made at an earlier time, can now be tested in this wider context, perhaps with a greater level of detachment and clarity.

We should also examine the progress that has been made towards implementing the recommendations, or at least moving towards a situation in which such excesses identified by the Royal Commissioners have a greater prospect of being nipped in the bud before too much damage is again done.

My earlier career was in auditing. One of the lessons of auditing is that a deterioration of information and ethical behaviour sets in over time when executive actions are not exposed to independent scrutiny and accountability. The onset of such negative behaviour is insidious. Initially, honest people do their best to act honestly in the best interests of their organisation. Gradually, if not exposed to accountability, little things go wrong, and corners are cut. Later, truth tends to be bent somewhat to suit one's convenience. Later still, wholesale deceptions are resorted to in the interests of some "greater interest", whatever that may be, or for personal gain.

The lesson of history is to insert a degree of accountability into this process. Indeed, it can be said that the integrity of a system is only as good as its independent verifiability.

Now, what has auditing got to do with the Royal Commission? One answer, is that when auditing is not present, or the function fails, things start to go wrong. In some cases, they go very wrong; even unbelievably wrong.

Many celebrated company collapses and frauds look so simple in retrospect. The errors seem obvious. At the time, however, this simplicity was usually hidden in a confusing maze of detail and seeming irrelevancies.

Does this mean that we should strengthen the level of auditing in both public and private life? One answer is yes, simply to keep up with the increasing demands and sophistication found in modern corporations and government. Yet at another level, the answer is no. One cannot become so bound up in auditing, checking, policing, accountability and reporting, to the extent that useful and productive actions don't get done.

It may well be that our current society is tending that way at present. All the checks and laws and regulations and accountability in the world will not, in itself, eliminate improper practices. Nor will whistle blowing on trivial matters do so, other than become another bureaucratic nuisance and a means of harassing others. Some sense of proportion is needed to balance initiatives with investigations, achievements with accountability, and reward with restraint.

At this stage I should divert for a moment and assure you that those words about a sense of proportion were written prior to reading the headlines in this morning's newspaper, which is a good illustration of the difficulties involved.

Universities are public bodies, and we must always be ready to open ourselves to public scrutiny. Indeed, this happens all the time. In accounting to the Commonwealth government, the State government, the Department of Employment, Education and Training, our Senates and Councils, numerous agencies dealing with social and industrial legislation, our staff, students, employers, the media and the public, I sometimes feel that universities currently suffer from an excess of accountability, to the detriment of teaching and research.

The Auditor General has added his bit, and found universities to be wanting in some respects regarding the administration of consulting by academics. Well, we must be prepared to stop and listen when he speaks, or we would be hypocrites in espousing accountability and integrity for others, but not for ourselves.

I *did* hear the Auditor General say that our administrative procedures needed to be better administered. In fact some months ago we agreed to do precisely that in the audit exit interview.

But I did not hear the Auditor General say, as headlined somewhat enthusiastically in *The West Australian* today that the "Auditor General attacks Academic Cheats". There is absolutely no evidence to that effect.

In any case, our total consulting income is less than 1% of our revenues. Most academics are far too busy on academic matters to find the time for additional work as consultants. Moreover, given the pressures that universities are under to reduce their dependence upon public funds, some consultancy is a useful way of generating some top-up private income to supplement relatively low academic salaries closer to those in industry.

It is therefore a sensible policy to encourage academics to share their expertise with the community. Consultancy is beneficial both to staff, the organisation receiving it, and to students in keeping them in touch with the practice of the real world. This close interaction between universities and downtown, is one of the strengths of German universities, for example. That of course is provided the first priorities on teaching, research and administration are met.

Most universities have processes in place to see that this is done. Some, from time to time, need to be reminded to review their administrative processes, and that is what is already being done through our Audit Committees and Administrations in responding positively to the recommendations of the Auditor General.

This Conference on accountability, as it happens, was organised through SASTEC, the consultancy arm of the Faculty of Science, Technology and Engineering at Edith Cowan University. I can assure you that this Conference is properly accounted for!

Last century, in the Western World, it was found that the new corporation required more capital and a greater level of risk than that which could be handled by individuals or partners. The result was the limited liability company in which the personal liability of individual investors was limited, generally to their paid up share capital, in return for a public disclosure of what was happening in the business.

Business organisations are far from perfect. Too many collapse, like Rothwells, in inglorious circumstances. But on the whole, the public disclosure requirement, aided by the media and informed comment, works quite well, without detracting too much from an ability to run the business.

Public organisations and governments still have some way to go in this regard. For myself, I believe accountability is best enhanced by independent scrutiny, as well as a series of other safeguards, including in many cases public disclosure.

It is the task of this Conference to examine these issues and processes further, and in particular, to test how we can sensibly go about improving the accountability of our public life.

One area in which we failed as a society, was in our silence, or absence of critical facilities, at the time many of the worst excesses of the W.A. Inc. era were occurring.

There were excuses. We were busy, the facts were not apparent, we did not wish to offend, and it was somebody else's business.

Professor Ed Shann was one who foresaw the great depression of the 1930's. I have never quite worked out whether he did so by good luck, or by superior analysis and observation. On this occasion, Associate Professor Patrick O'Brien was one of the few who called out loudly what he saw. It is a credit to him that he did so, and some reflection on the rest of us that we were silent at a time which, in retrospect, called for us to query what we saw; even what we did not fully understand.

Professor Geoffrey Bolton is right in saying that wherever the real blame lies, academics must accept some of the blame too. Few of us can walk away from this episode feeling that we had done all that could, and should, have been done. In one sense, this Conference is to revisit issues which we failed to properly visit in the first place.

How then can another W.A. Inc. be avoided, or at least the risk of a repeat be minimised? What is the right balance between freedom and accountability? What level of public disclosure is needed? What more should be done arising out of the deliberations of the Royal Commissioners?

That, essentially, is what the proceedings are about. On behalf of Edith Cowan University, I have much pleasure in welcoming you here today, and inviting your participation in what promises to be a timely and worthwhile contribution to the future we deserve.

MAKING GOVERNMENT ACCOUNTABLE: THE NEW SOUTH WALES EXPERIENCE

Mr Ian Temby QC
Barrister and former Commissioner
(Independent Commission Against Corruption 1989-1994)

There is a clear world-wide trend towards people power, the imperative that those who govern be made to account to those they govern for how they wield power.

In Japan, the ruling party was thrown out of power precisely because it was seen as corrupt. Those who followed, largely unaccustomed to holding the reins of power, had difficulty adjusting, and nobody would claim that the position is yet perfect. But the people sought change, and change was the result. So it was in Italy. In Brazil and Bangladesh, grand corruption has led to the downfall of Presidents. Closer to home, who can forget the people of the Philippines, defying the army to shoot as they marched through the streets of Manila to bring down President Marcos. Many other examples could be given.

In Australia, efforts to make Government more accountable have varied greatly from State to State, which not surprising as the steps taken have been politically driven. It is equally unsurprising that the first domino to fall was in Queensland, which suffered under a Government of spectacular arrogance and a police force which had become an instrument of political power. A Commission of Inquiry was held, chaired by Fitzgerald Q.C. who had been and is now again a Judge. Over two years of vigorous investigation beginning in June 1987 led to a change of Premier, a scathing report, a change of Government, and the setting up of various reform institutions, the most ambitious being the Criminal Justice Commission. Unfortunately that body had an unwieldy structure, and for that and other reasons it has remained both highly visible and distinctly unpopular with the politicians.

In each of Victoria, South Australia and Western Australia, Royal Commissions were held over the next few years. In each of those States, revelations of financial irregularities and losses caused Premiers to lose office, and in due course of time, Governments to be changed. All of this reflects democracy in action, and is to be welcomed. Closer analysis is called for before we can judge the extent to which the noble cause of increased Government accountability has been furthered by these events.

New South Wales has had more than its share of scandals over the period since white settlement. However, the course of recent history has been generally less eventful than in the other States just mentioned. In my adopted State, a change of Government was followed by the establishment of a new statutory body charged with the responsibility^a of reducing corruption, improving public sector integrity, and making Government more accountable. The rest of what I have to say will deal with that institution, the Independent Commission Against Corruption ("the ICAC") although at the end I will compare the current position in New South Wales with that in both Queensland and Western Australia. Dispassionate analysis leads to conclusions that are less than sanguine.

Having said that, it must be stressed that we Australians are well ahead of most other countries from the viewpoint of people power. We can and do vote to change Governments. The media are relatively free, as is the flow of information. We are not inclined to knuckle down to those in authority, basic services can be provided in a timely and cost effective fashion and without that widespread corruption is inevitable - and political malfeasance is less widespread than in the USA or any of the countries in the Asia Pacific region, with the probable exception of Singapore.

It must also be acknowledged that in New South Wales and elsewhere there have been other and important systemic changes over the past two decades or so. They include freedom of information legislation, a trend towards greater Parliamentary Committee examination of public accounts, an increasing tendency for Auditors-General to deal with program efficiency and effectiveness as well as how public monies have been spent, and increasing emphasis within the public sector generally upon outcomes. To the extent this last matter reduces the importance attached to process, it is a mixed blessing.

The ICAC came into existence on 13 March 1989. It was set up by legislation, which had a contentious passage through the Parliament. Concerns were expressed by the newly created Opposition which feared that the ICAC would become a vehicle for bashing the ALP, the Judges who resented the prospect of being brought within the purview of the new body, and civil liberties groups. A wary attitude continued for some time after the Commission came into existence, although within a year or so the reservations held had been largely dispelled, at least so far as the first and last of these groups were concerned.

From the beginning the Commission set out to be as open and accountable as possible. An answer obviously had to be provided to the old question as to who would guard the guardians. Performance of the ICAC was monitored by a Parliamentary Committee, which had power in all respects save operational matters, and a statutory Operations Review Committee existed to ensure that decisions whether to commence and continue investigations were made correctly. Perhaps more importantly than these mandatory requirements, the Commission was forthcoming in its approach, largely held public hearings - as indeed the legislation required - and sought to solicit information and support from the public. For the first year or so most effort went into the investigative side of the Commission's work, but thereafter strong and increasing emphasis was placed upon the other two activities required by statute, namely, public education and corruption prevention work.

The Commission was given all powers enjoyed by the Courts, although of course it was an administrative body charged with the responsibility of reporting to Parliament and could not bring down judgments or change the status or rights of citizens. As well as having power to subpoena witnesses and documents, and to administer oaths for the purpose of hearings, the Commission had power to obtain search warrants for the purposes of its investigations, whether or not a criminal offence was suspected, and the Commissioner could authorise ICAC officers to enter upon any public premises without warrant and seize documents. Further, witnesses could be required to answer questions even if in so doing they might incriminate themselves. The legislation gave them the right to object to answer questions, and in that event the answers given could not be used against them otherwise than in proceedings for false swearing.

It seemed appropriate to carefully control the circumstances in which these extraordinary powers could be used. Accordingly the ICAC adopted, from the outset, the practice that the special powers would be used only in the course of formal investigations, which would be commenced only with the authority of the Commissioner, and only after close consideration, almost always preceded by substantial examination of material and preparation of internal submissions. A very selective approach was adopted. The Commission reserved itself for the most difficult work, which others could not or would not do, and extensively used the power to refer lesser matters to other organisations, in particular the Ombudsman.

On average during the first five years only ten investigations a year were commenced.

In the hearing and report process, much emphasis was placed upon systemic improvement, and every opportunity was taken to spell out general truths that could be applied by bodies other than that under investigation. A lot of work was done in relation to each of local government, tendering, land development and policing. As will be related shortly, the ICAC also delved into the political process from time to time.

The ICAC has been described by some as a standing Royal Commission into public sector corruption, and that description has aspects of truth, but is in some respects inapposite.

When a Royal Commission completes its report it becomes *functus officio* - there is nothing left for it to do, no power for it to exercise. What Government does with the report which it has commissioned is entirely a matter for it. History shows the typical response is an undertaking to study and implement where practicable, followed by cunctation and insignificant action. There are exceptions - Fitzgerald's excellent report was wholly acted upon, pursuant to extravagant and competitive promises made by all politicians before it was handed down that complete and enthusiastic implementation would be effected. But the general rule remains. A standing body, having responsibility for minimising corruption and enhancing public sector integrity, can follow up on recommendations made and thus increase the likelihood of action. The ICAC followed that course, with considerable success. Not every recommendation was implemented, but the success rate was high. Sometimes there was frustrating delay, but except in the Parliamentary area, no reports lacked all effective response.

A critical difference between the ICAC and any ad hoc Commission of Inquiry is that the former sets its own agenda, decides for itself what to investigate, and works to Parliament. Any Royal Commission is appointed by Government, with terms of reference set by Government, and reports to Government. On occasions, reports provided have remained secret for long periods. That could never happen with the ICAC. Of course a standing body must be able to decide for itself what to investigate, because otherwise it cannot be seen as independent from Government. Without that independence, public confidence cannot exist, and at least in the medium to long term, failure is assured.

Corruption, viewed simply, is the abuse of public power for private ends. The greater the power, the greater the capacity for abuse. A ticket collector acts corruptly in putting fares into his own pocket, but that is not of great moment, and the criminal law can be used to handle the situation. A mayor who secures for his brother-in-law a contract to mow all parks within the municipal area has done something more significant and insidious, because he has more power. And of course Cabinet Ministers and judicial officers hold more important public trusts, enjoy greater power again, and have a greater ability to abuse it. It should be remembered that important events leading to the creation of the ICAC included the sale of early releases from prison by the then Prisons Minister (Rex Jackson) and actions in perversion of the course of justice by the then Chief Magistrate (Murray Farquahar). Each was investigated by an ad hoc body appointed by Government. Both men were imprisoned. Their actions caused the gravest possible public disquiet, and the steps taken against them were important in demonstrating that even those in positions of significant power were not beyond the law.

As has been said, the greater the power, the greater the capacity for abuse. It is therefore not surprising that the ICAC should have turned its attention to the conduct of those who held high political office. As successful politicians are not famed for their meekness, it is equally unsurprising that they should have resented and resisted those attentions, and turned their wrath upon the ICAC.

The first Commission investigation that saw Cabinet Ministers and other politicians in the witness box was conducted by Assistant Commissioner Roden, a retired Supreme Court Judge. It was into land development in the north coast region of New South Wales. No findings of corruption or recommendations were criminal action were made against elected officials, but some were held in terms of the statute to have behaved in a manner conducive to corrupt conduct. That, and indeed the mere indignity of being in the witness box and made to answer for their actions, led to extraordinary outburst of anger, culminating in the Deputy Premier (one of the reluctant witnesses) likening the ICAC to the Spanish Inquisition. Other analogies used by politicians in relation to the ICAC were to Stalinist show trials, and to the Star Chamber. Of course politicians tend to talk in slogans for the purpose of creating headlines, but the contended for analogies demonstrated a deplorable ignorance of history. The very essence of the Star Chamber was its secret hearings, whereas in truth the great difficulty the powerful had with the ICAC was its open approach and public hearings. As to totalitarian show trials, the point of course was that the outcome was known before the nominal hearing commenced, which was manifestly untrue of the ICAC, a body which on occasions brought down reports declaring that allegations made were without substance.

After the North Coast report and the attendant fuss and bother, the Commission continued to conduct investigations small and large. The latter included one which disclosed a widespread and illicit trade in supposedly confidential Government information, another which lifted the lid on organised corruption in relation to the issue of drivers' licenses, a third into the use of prisons informers, and a fourth into the relationship between police and criminals. Unfortunately overshadowing these large and difficult matters, each of which has led or is leading to large systemic change, there was the so-called Metherell matter.

Before coming to that matter, mention should be made of an ICAC report - relating to a former member of Parliament named Mochalski and one of his constituents - which contained suggestions for Parliamentary reform, namely that -

- an induction program be introduced for new Members, to help ensure that they understand their role and do the right thing;
- Parliament develop a code of conduct for its members and perhaps also their staff - this followed a useful submission to the ICAC from the Speaker; and
- the oath of allegiance have added to it an oath of office, analogous to that taken by new Judges, by which Members of the Parliament promise to do right by all manner of people without fear or favour, affection or ill-will.

A statutory officer who works to the Parliament must of course show due deference. The report contained this passage:

The Parliament is the repository and chief organ of our democracy. Its Members are elected, as no public servant or ICAC Commissioner is. Those chosen by the people are properly in a position of great power as well as responsibility. The Parliament has always guarded its privileges most strongly, and that is as it should be. The head of a statutory body created by the Parliament cannot properly tell the Parliament what to do. Accordingly I think it inappropriate to draft a code of conduct, as was done for local government, unless asked by the Parliament to do that, or otherwise assist. The Committee on the ICAC can make an important contribution if so inclined. The Bowen report (on the Federal Parliament, prepared in 1979) provides a fair starting point.

Any decisions concerning induction programs or codes of conduct must be for the Parliament to make. This chapter is written to round off a Report which documents how a former Member of Parliament got himself into an impossible situation with a constituent. Doubtless Members will say that they would not behave in a like manner, but that is not quite the point. Unless all our elected representatives can say that they receive at the moment an appropriate level of training and guidance, then it surely behoves them to pursue the issues which have been raised.

The key ICAC recommendation related to the proposed code of conduct. There was a little action. A Parliamentary committee sought submissions, and began the process of preparing a code which was to be imposed on all. They became mired in the question of enforceability. This was the wrong way of going about the job, and it contemplated the wrong end product. Codes should be prepared from the ground up, and are designed to provide guidance, not be a tool for punishment. In consequence the Parliament still lacks a code of conduct, although they are universal features of modern public service life in New South Wales.

Part of this unsatisfactory reaction flowed from the fact the Metherell hearing commenced not long after the Mochalski report was presented to Parliament. Metherell was a former Cabinet minister who had resigned after conviction of a tax offence, later left the ruling party to sit as an Independent in a finely balanced Parliament, and was then after covert manoeuvrings appointed to a senior Public Service position. That happened in circumstances which made a mockery of competitive selection procedures which have characterised the public sector in this country for many decades. The appointment led to public clamour including allegations of corruption. After some time the Commission decided it must conduct an investigation, and its report made findings of corrupt conduct against the then Premier and a Cabinet Minister. Both men challenged the report in the Supreme Court. Before the hearing they were forced to resign. A majority decision of the Court of Appeal striking down the ICAC finding naturally led to suggestions that their conduct had been completely vindicated, although that is hardly a realistic description of the outcome.

The new Premier was distinctly less supportive of the ICAC than had been his predecessor, many members of Parliament have become very distrustful of the institution, and protestations of support for it while customary have sometimes rung somewhat hollow. The hope was that when I left as the first Commissioner after five years in March 1994, most of the political opprobrium would follow me, and the Commission would flourish. However, there has been bungling and delay in the appointment of the new Commissioner, and patient rebuilding of the institution and its relations with politicians and others will now be necessary.

Those who decry the ICAC fail to recognise the great benefits that it has brought. These are not restricted to increased confidence in the public sector, increased integrity in public life, and substantial systemic change. The simple fact that the Commission exists has given Government somewhere to send scandals as soon as they arise. The ICAC enjoys public confidence, is seen as impartial, and its decisions not to investigate are accorded general acceptance. In the bad old days a real scandal was met by mud slinging, denials, and the ultimate appointment of a Royal Commission or similar body. Typically this was followed by a cessation of most Government activity while the inquiry was conducted, generally quite slowly. All this is best avoided. If anybody doubts what is said, they can look at any or all of Brisbane, Perth, Melbourne and Adelaide in recent years. Surely the chilling effect which a major Commission of Inquiry has upon Government processes is best avoided.

The Metherell matter was painful, and the outcome must be seen as unsatisfactory, but it was certainly carried through in an independent and impartial fashion, and it was certainly expeditious. Had the ICAC not done the job, then inevitably another body would have; at worst a Parliamentary Committee, which is an horrific thought. The matters the ICAC investigated simply had to be examined, in an impartial manner. Further, nobody suggests that the ICAC got the facts wrong. It is a great aid to orderly public administration to have a standing body to which matters can be referred. This is a point which I know is fully appreciated by both the present Premier and the Leader of the Opposition.

One should not be too despondent about the reaction of those holding elected office to the ICAC. Reactions in other places have been broadly similar. In Western Australia, the recommendations of the Royal Commission Into Commercial Activities of Government were received with a marked lack of enthusiasm,

implementation has been slow and partial, and the desire of Government to make itself and its successors more accountable has been less than wildly enthusiastic. In Queensland, as mentioned earlier, relations between the Criminal Justice Commission and Members of Parliament have been strained for a long time. I have never understood how the CJC could have considered bringing down a report which found widespread roting of the travel allowance scheme by Parliamentarians, gave the number of those who had misbehaved, but would not name them. The job should surely have been done fully, or not at all. That matter has left many scars. The CJC accepts that it cannot investigate elected officials except where criminal misconduct is suspected. Presumably, by extension, that includes holders of Ministerial office. No statutory change is being sought by the CJC.

This cannot be good enough. Government must be made accountable, and there must be no room for the view that Ministers are either above the law or beyond proper scrutiny.

The best solution is not difficult to find. It was recommended by the ICAC in the immediate aftermath of the Metherell affair, but has not been acted upon. Justified criticism of the ICAC legislation by the Court of Appeal well over two years ago should have led to early statutory changes. They are still under consideration. This is deplorable.

The answer applies to all constitutional office holders, that is to say those who hold any public office at the will of Parliament. That includes Judges, Ministers, and Members of Parliament, because Parliament can decide for itself who sits and who does not. In relation to each of these groups, and there are doubtless others such as the Auditor General and indeed the ICAC Commissioner, the decision whether office continues to be held ought to be made by the Parliament. However, to make that decision Parliament should act upon facts as found, not conclusions reached following an intemperate Parliamentary debate or by a Parliamentary Committee which must comprise the politically partisan, but by an independent body. That independent body should be of a standing nature, so as to be immediately available; the ICAC or the CJC. It should not be required to make findings of corrupt conduct, but simply report facts and leave the matter for Parliamentary decision. This is the course that was followed in Queensland under the Parliamentary (Judges) Commission of Inquiry Act, 1988 when the conduct of Mr. Justice Vasta of the Supreme Court became a matter of concern. The only difference is that the inquiry was conducted by an ad hoc group of three retired Judges, rather than by a standing body, because no such body then existed in that State. The process envisaged could begin either pursuant to a Parliamentary reference, or at the volition of the ICAC or equivalent body.

Government has left the ICAC to languish, first by long delays in introducing necessary statutory change, and secondly, by holding up the process of appointing a new Commissioner until the incumbent - myself - was well and truly gone. Of recent times there has been progress on both fronts. Legislation has been passed which will allow the new Commissioner-designate, a Judge of the Supreme Court, to return to judicial office when he has served a term at the ICAC. He made that a condition of accepting appointment. Secondly, Parliament is debating proposed changes to the ICAC Act which would predicate jurisdiction upon possible breach of conduct codes. Anyone with a cynical streak would reckon that a code of conduct for Members of Parliament is unlikely to either be in place quickly, or be rigorous in its contents.

Permit me to conclude on a personal note. I take considerable pride in the work which the ICAC did during the five years that I had ultimate responsibility for it. Of course many contributed, most notably Commission staff, the great majority of whom were fine and keen individuals. We achieved a very great deal. It is unfortunate that at the end of the day those achievements remain clouded by political controversy, but mature reflection tells me that this was always likely if the job was to be done without fear or favour. My hope is that the Commission, under the new Commissioner, will quickly resume active and effective work.

PAST AS PROLOGUE: A SECOND ANNIVERSARY REFLECTION ON THE WORK OF THE ROYAL COMMISSION INTO W.A. INC.

Michael L. Barker LLB(Hons); LLM; Barrister;
(one of the Counsel who assisted the Royal Commission 1991-1992)

The Royal Commission into W.A. Inc.¹ was borne of a period of turbulence and predatory conduct not altogether unique to the circumstances of this State; a period in which the much-talked about and much-written about "baby boomers" began their ascendant march in politics and business, though not a period in which those in politics and business with predatory habits were limited to those whose first youth was enjoyed in the 1950's.

As we reflect in late 1994 on the work of the Royal Commission into W.A. Inc. completed two years ago, we would do well to recall also the circumstances which gave rise to the establishment of the Fitzgerald Commission in Queensland in 1987², the setting up of the ICAC³ by legislation in New South Wales in 1988, the State Bank inquiry in South Australia during 1991-1992⁴, the Intercontinental merchant bank inquiry in Victoria which reported in 1993 and the Rouse Affair in Tasmania of about the same time. In other countries similar waves of turbulence were also observable during the same periods.⁵

The evidence from these various inquiries shows that something fundamental, something important went missing in the practice of government and the conduct of commerce throughout Australia during the periods in question. Our institutions of government were found to be lacking. Public officials, both elected and appointed, abused the trust invested in them by the public: they carried on government in secret, without giving a proper account of their actions and, sometimes, dishonestly. These public officials, as a group, were devoid of integrity and helped in no small way to confirm the reputation of public officials in Australia, certainly politicians, as a class, as a "barely necessary evil."⁶

The conviction and imprisonment of a former premier and deputy premier of the State in recent times, added to the revelations of the W.A. Inc. inquiry, have only served to exaggerate the view of many Australians living elsewhere than in this State, that Western Australians are mavericks; certainly that our local politicians and businessmen are, unlike those elsewhere in the country. Such a view is necessarily a generalisation and so cannot and does not apply to all Western Australians or local politicians and businessmen. It is also a view which depends completely on a thorough going and very public dissection of Western Australian political and commercial life between 1983 and 1990, as well as some matters predating this period, which was carried out at the investigation of a State Government of the same political persuasion as those predominantly the subject of investigation, albeit and necessarily by reason of considerable public pressure. As a result, all Australians perhaps know a lot more about the practise of government and the behaviour of businessmen in Western Australia in those years than they do in their own States. Western Australian citizens were prepared to tolerate such a process regardless of the tarnishing effect it would necessarily have on their and the State's reputation. It is arguable that no other State, not even Queensland, has subjected itself to such a vertical and horizontal examination.

Today we ask, somewhat rhetorically, whether it has all been worth it. I would answer, simply and without rhetoric, that it will have been if we learn from the past and not repeat the mistakes our recent history of government has taught us. In this sense, the past truly is the prologue to the State's constitutional future.

Some of the more endearing qualities of Western Australians, borne of physical isolation, are their sense of self-worth, their willingness to make do and their preparedness to fight against the odds. These help to explain the sometimes seemingly contradictory conduct of our citizens: an adventurousness in national business and politics, a secessionist mentality, a fierce national pride. They also lead to a belief, perhaps, that Western Australians are the "true Australians", those who collectively enjoy "a fortunate life".⁷

Sometimes, however, we Western Australians may profit from a considered and broader view of social, economic and political developments elsewhere in Australia and, indeed, over the seas. In the case of the W.A. Inc. era we should be prepared to accept that the events which gave rise to the phenomena reviewed by the Royal Commission were unique to the State only in the sense that the individual participants were "sons" of the State, and that in all other respects the debilitating effect of the conduct of these individuals was not endemic to Western Australia, not simply an "aberration" in the life of the government of the State, but a symptom of a more widespread malaise in government in Australia and, indeed, world wide.

The first part of the Report of the Royal Commission, by chapter and verse, identified the malaise in government. There is much to be said for the view that for all intents and purposes, we the citizens had found ourselves living in a classical "one party State". Within a State constitutional structure in which the judiciary is not an entrenched institution of government and the State legislature is considered (by some) to reign supreme, the executive government of the day was run by a relatively small group of senior ministers who exercised control or influence over their party machine, the entire public sector of the State, much of the media and the Parliament. Having also aligned major business interests with their interests, these ministers were, or at least appear to have considered themselves, relatively immune from the vagaries of the ballot box. Hubris, that "overweening pride towards the gods, leading to nemesis"⁸ can usually be relied upon to re-order human ambitions and did so in this State when the Royal Commission, having pored over the remains of the Burke and Dowding periods of government, found⁹

- that some ministers had elevated personal or party advantages over their constitutional obligation to act in the public interest;
- that the personal associations of some ministers with certain businessmen and the manner in which electoral contributions were obtained from those businessmen could only create the public perception that favour could be bought, that favour would be done;
- that members of statutory authorities with very significant funds subject to their control seemed to be unaware of, or else indifferent to, their legal and public duties;
- that persons appointed to statutory authorities had not always been possessed of appropriate experience and qualifications;
- that, in many instances, the capacity of statutory instrumentalities to act in the discharge of their statutory obligations was severely constrained by the presence on their boards of public servants who represented government;
- that processes of decision making were often shrouded in secrecy by virtue of the lack of a public record;
- that the proper role and function of cabinet was either poorly understood or deliberately abused on certain occasions by the Premier and certain senior ministers;
- that there had occurred, especially during the Burke years, a marked change in the approach of government to business, it was entrepreneurial and risk-taking

The Royal Commission had little hesitation in concluding¹⁰ that these findings revealed

"...serious weaknesses and deficiencies in our system of government. Together, they disclose fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the executive fulfils its basic responsibility to serve the public interest."

In its tone and broad thrust this conclusion was similar to that arrived at by the Fitzgerald Inquiry. It also mirrored other contemporary Australian criticisms of the system of government inherited from Britain which some improbably continue to insist on calling "the Westminster system".

In short, the near-universal complaint in Australia is that our constitutional system, with all its supposed "checks and balances", is prone to executive take-over or control. The W.A. Inc. inquiry and report is but a well-defined illustration of the fact, for fact it is. The question is, how, if at all, our constitutional system can be improved. This is, of course, the Big Question, the question students of government, politics, public administration, law, life, and many other disciplines besides, spend most of their lives contending with, writing about in academic journals, debating in common rooms and at dinner parties; and musing over in more or less serious forms of media.

The Royal Commission had the responsibility to engage in this god-like task, aware no doubt from the outset that they could and would not please everyone, nor respond to every blueprint for reform. They requested advice from the public and they received it.¹¹ On the one hand, there were those who claimed all the system needed was a "good dose of salts" to restore the health of the State and that all would be well upon removal of the incumbent government. That may have been a necessary step, but only a palliative, not a cure. On the other hand, there were those who claimed there was no life left in the existing system and that only a major transplant, of a heart, could save it, that is, wholesale constitutional reform to remove for all time the prospect of executive dominance of the system. Emotionally there is much to commend this view. In between, as one would expect, many other prescriptions were offered for improving the health of the State.

The Commission ultimately responded to the Big Question by attempting to identify the conceptual and practical bases upon which it believed consensus existed as to how government in Australia is practised in the late 20th Century. It sought to establish, if you like, the "organising principles" by reference to which government operates. It eschewed an alternative approach to the question which might have seen the Commission attempt to identify the "major complaints" or problems exposed by W.A. Inc. (whether by reference to volume of evidence of some subjective assessment of their seriousness) and proffer suggestions or solutions as to how they might individually be responded to, although specific reforms in certain areas were recommended as part of the approach adopted by the Commission.

The Commission plainly enough believed that if you can agree what government is all about then the reforms required to respond to the identified weaknesses in the system either would suggest themselves or would be found to be unavailable within the current system of government and so require invention.

Consequently, at the outset of Part II of its Report, the Royal Commission contended¹² that two principles underlie, or should underlie, our system of government. I doubt that anyone would quarrel with either. The first was described as "the democratic principle": that it is for the people of the State to determine by whom they are to be represented and governed. The second, "the trust principle": that the institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public.

The Commission explained that each principle carries with it certain consequences. As to the democratic principle, the Commission said this:¹³

"The first institution of representative government, the Parliament, must be constituted in a way which fairly represents the interests and aspirations of the community itself. The electoral process must be fair. Public participation in, and support for, candidates, parties and programmes is to be encouraged. However, electoral laws should aim to prevent sectional interests from purchasing political favour, and to prevent those seeking election from attracting support by improper means."

As to the trust principle the Commission noted that it provided the "architectural principle" of our institutions of government and "a measure of judgment of their practices and procedures".¹⁴

The Commission sought to translate these two fundamental principles of constitutional organisation into three practical goals which, if observed, it considered were necessary to safeguard the credibility of our democracy and an acceptable foundation for public trust and confidence in our system of government. The three goals are:

- government must be conducted openly;
- public officials and agencies must be made accountable for their actions;
- there must be integrity both in the processes of government and in the conduct expected of public officials.¹⁵

In the light of these two fundamental principles and three practical goals, the Commission set about a broad review of the structure and practise of government in Western Australia. Ultimately, it made specific recommendations for change where it could form a clear and concluded view as to what precisely was required to deal with a particular problem. In a number of areas, however, the Commission recognised concerns, suggested the means or approach by which a problem might be addressed, and expressed the view that the issue was one which should be considered by a Commission on Government specially appointed to do so in a report to Parliament following extensive public consultation. The Commission expressly observed that issues falling into this category "are not solely for parliamentarians and the Government to solve".¹⁶ Nonetheless, the Commission invariably expressed its views as to the values or principles which should inform consideration of these issues.

In a number of respects, the recommendations and principled views of the Royal Commission have not met with bipartisan political support in the two years which have passed since Part II of the Report of the Commission was handed down. The reason for this is clear enough: there are those who fear that implementation of the Commission's recommendations will lead to a re-ordering of political power away from the familiar power bases upon which they rely and so they tend blindly to oppose change. Indeed, in order to attempt to weaken the influence of the Report of the Royal Commission, these same persons are prone to make scurrilous allegations concerning the authorship of the report and the process by which it was produced. One such allegation, which those who were also closely associated with the Report of the Royal Commission might consider humorous if it weren't so serious and if it weren't made by some of the State's most senior politicians, is the allegation that the Commissioners "only had one day in which to consider it [Part II of the Report]" before subscribing their names to it.¹⁷ The Hon. Peter Brinsden Q.C., a former Justice of the Supreme Court and one of the Royal Commissioners, has recently responded to this utterly absurd proposition by labelling it "ridiculous"¹⁸, a truly understated comment if ever there were one! One would hope no further comment is required, although I suspect those who don't like the Commissioners' message will continue to contrive opportunities for shooting at the messenger!

It is now to the message that I shall return. It should be plain enough by now that the Commission considered the W.A. Inc. phenomena were able to occur because our governmental system is not structured to prevent it. Parliament, which we have always held to be the centrepiece of our democratic system - our Parliamentary democracy - failed to prevent W.A. Inc. Independent watchdog agencies largely failed to prevent W.A. Inc. The public service was no obstacle to its occurrence. The media was noteworthy for its failure to expose W.A. Inc; rather the local media, particularly "The West Australian", may well have been responsible for assuring the return of the Dowding government at the 1989 general election. The common factor, as noted earlier, was that the executive arm of government got away with proverbial "blue murder": it suborned the institutions of government, and media and private business interests (the latter no doubt knowingly and willingly), to its own interests.

Central to the Royal Commission's response to this political reality was a desire not to radically alter the system, but to strongly reinforce the tenets of "responsible government and representative democracy" by ensuring that the means exist whereby executive government can in fact, and not just in theory, be made open, accountable to the public it serves, and imbued with integrity. Accordingly the Royal Commission report starts with the people and their forum, the Parliament, and ends with the people as the mechanism for making our existing system of government work. I cannot emphasise too strongly this theme in the report of the Commission; for it is an overtly democratic document.

The practical goals of openness, public accountability and integrity expressed by the Commission, unlike virtue, can be provided for; at least, structures, processes and checks can be put in place which enable the political processes to work so that these goals have a realistic chance of being realised. It has long been asserted that our inherited British system of government enjoys the benefits of a "separation of powers" doctrine, that is to say, that by keeping the executive, legislative and judicial arms of government separate each from the other we are best able to curb the abuse of public power. The theory is a good one. However, our system currently fails to achieve the appropriate degree of separation and I believe that, in large measure the recommendations of the Royal Commission were, and are, intended to remedy this failing or deficiency in our system of government. Put another way, they are intended to ensure that each arm of government is practically able to do what it is intended to do in constitutional theory. By and large, the judiciary is independent although its true independence must always be jealously guarded. Under the federal constitution the independence of the judiciary is effectively guaranteed. In Victoria, a statutory guarantee of independence exists, although the extent of its protection may be debated. In Western Australia, as in most States and Territories, the position is different and the judiciary has no guaranteed independence.

As an aside, perhaps the time has arrived when this issue needs ventilation and further consideration. However, the W.A. Inc. phenomena did not disclose any particular threats to the independence of the judiciary. But, as we have seen, it did disclose a threat to the capacity of the legislature, the Parliament, to act as it should, as a reviewer of executive power, as well as a law maker; in short, as an accountability agency.

In much of the recent public attacks on the recommendations in Part II of the Report of the Royal Commission there is evident a common concern, namely that the Commission went so far as to concern itself with the composition of the Parliament. How did the electoral system cause corruption or improper conduct, some naively ask. How did the Parliament act improperly? In every case the rhetorical questioner simply has failed to understand a basic tenet of our constitutional system which is that the Parliament is the mainstay of our democratic processes. It must be so structured and so empowered to ensure it can act as the ultimate accountability agency, for there can be no mistaking that is what it is. If the Parliament is incapable ultimately of protecting the public interest, and if we now wish to acknowledge some inherent inability of Parliament to act in this way, then more radical constitutional measures may be called for and, at least, a Bill of Citizen's Rights

should perhaps be enacted urgently to empower the judiciary to do what the Parliament is incapable of doing.

The Royal Commission, however, was unwilling to reject our constitutional inheritance, rather it wished to make it work. Its recommendations demand executive government first and foremost to be open; to adopt "openness" as a habit, "a cast of mind". They also demand public officials to act with integrity, and propose additional means such as the creation of a Public Sector Standards Commission and a Commission for the Investigation of Corrupt and Improper Conduct (CICIC), whereby Parliament has improved means of monitoring and enforcing standards of proper official conduct. Some steps have been taken by the present government, along with others designed to secure public sector management reform, to pursue the former recommendation, but little has been done in respect of the latter. The existing Official Corruption Commission (OCC), even with its recently acquired additional powers, is but a pale imitation of the body proposed by the Royal Commission to oversee complaints of corrupt and improper official conduct in this State. The proposed bodies, together with the existing accountability agencies of the Auditor General and the Ombudsman (and to an extent the DPP) have, or should have, the power and the responsibility to report to Parliament in a timely and informative manner so that Parliament may function, to the fullest extent possible, as the ultimate accountability agent. However, it must be said that a Parliament which is not perceived to be structured on democratic grounds and in which the public can have little confidence that issues of public importance brought to its attention will be dealt with other than on partisan political grounds, will have little chance of fulfilling its constitutional accountability function. Parliament must be made to work. The question is how. The Royal Commission's suggestions are plain enough, hardly utopian, but (as we have seen) susceptible to crude attacks from those in established political parties who strive only for one thing - power.

The Commission observed, in my view rightly, that:

"The causes of a decline in the effectiveness and reputation of the legislature in Westminster systems are well understood. The lie chiefly in the dominance of the party machines in the work of elected representatives. When a Government commands a majority in both Houses of a bicameral legislature, neither chamber is likely to provide a stringent check on the executive's activities. When an Opposition controls the Upper House, there will be a tendency for review to degenerate into mere obstruction."¹⁹

The means by which Parliament holds the executive to account are traditionally listed as question time, the committee system (especially standing and select committees) and debate on legislative measures. For the reason advanced by the Commission these may count for nought if review and public accountability are not real political possibilities. There is little doubt that the traditional Parliamentary accountability mechanisms require overhaul. In particular, in this State the committee system requires considerable development. It is beginning to occur, but there is much to be done. The origins of the public accounts committee as a parliamentary device to induce better systems of public management are well documented.²⁰ It demonstrates the potential and provides the prototype of a committee designed to achieve accountability outcomes. The committee system in the Commonwealth Parliament is considerably advanced on any comparison to this State's. Odgers says of the committee system in the Senate that it "is a major development in the strengthening of the Australian Parliamentary system of government. In particular, the committee system furthers the effectiveness of the Senate's role as a House of review".²¹ Fitzgerald commented to similar effect in assessing the weaknesses of the Queensland system of government.²² The Royal Commission adopted the same view essentially of this State's system of government.

The functions of a committee, especially one located within a House whose primary responsibility it is to overview the management and operation of the State's public sector, may be considered of great constitutional importance. In recent times, this comment has been amply demonstrated by various Senate committees in relation to specific heads of inquiry. However, committees may go further than this and be responsible for the early review and assessment of draft legislation and rules proposed by the executive or administrative bodies.²³

However, the capacity of an upper house such as the Legislative Council in this State to discharge such a review function, as a matter of practical politics, is dependent on the extent to which its electoral system is bound to reproduce the major political party struggle which dominates lower house (Legislative Assembly) proceedings. The more it is, the more likely the observation of the Commission quoted above will be perennially proven true. The Commission therefore sought to make observations and recommendations which would enable this cycle to be reconsidered and, in all probability, broken.

First, it recognised that the Legislative Assembly in our system of "responsible government and representative democracy"²⁴ is the House of Government. Secondly, it confirmed that the Legislative Council should be considered the House of Review, thereby identifying the strengths of a bicameral Parliament.

In order to highlight and advance the constitutional responsibilities of the Legislative Council, the commission had little doubt that a review should be conducted of the electoral representation system for the Council with a view to members being elected on the basis of proportional representation. The purpose and intent of this proposal is plain: significant minority interest should have the capacity to secure representation in the Legislative Council. Such a system it not bound to weaken the hold of the major parties in the Council, but is considerably more likely to do so than is the current system.

To emphasise the importance of the constitutional function of the Legislative Council as a House of Review, and not a mere extension of the Assembly or the government of the day, the Commission logically further proposed that:

- the Council should serve as the House primarily responsible for the systematic oversight and review of the public sector as a whole;
- members of the Council should, in principle, be prevented from holding ministerial office;
- the Council is the House with the greater capacity to exploit the committee system and, accordingly, should be the House in which most committees should be concentrated;
- the Council should not have the power to block supply.

Curiously enough, a Parliament structured in this way would have many of the features of the Commonwealth Senate and the British House of Lords. It would have an electoral system and constitutional function not unlike the Senate. It would be more democratically elected than the Lords, but would have in common with the Lords the inability to block supply.

The power to block supply is an issue capable of bringing out in many all the heated debates which usually accompany discussion of the Whitlam dismissal in 1975. To some, this suggestion by the Commission was seen as a plot devised by Machiavellian Labor Party fellow-travellers who had infiltrated the ranks of the Commission. In fact, it was a much-debated proposal which was ultimately considered but the logical extension of the Commission's desire to remove what might be called the "politics of government" from the realms of the Council and to supplant it with the "politics of review".

Understood in this way, there can be no real doubt that electoral reform of the Legislative Council is a precondition to devising a Parliamentary structure truly capable of holding executive government accountable to the public it is constitutionally obliged to serve. Those who oppose such reform, as I noted earlier, are concerned only with their possible loss of political power to a new constituency better able to realise the constitutional function of the House of Review. Whether or not they realise it, those in opposition to these reforms or their prospect are, or are in danger of becoming, the Trojan horses of the enemies of public accountability.

As observed, the recommendations of the Royal Commission going to electoral reform have been poorly understood by some. In other respects, however, the Commission's work has been more generally acknowledged as recommending necessary changes to the governmental system or raising issues which genuinely require considered public debate. However, despite this, many important, quite specific recommendations have not been implemented.

For example, and astonishingly in light of the rudimentary fact that its phenomenon gave rise to the Commission in the first place, Western Australia still does not have its own political finance law requiring disclosure of political donations to, and expenditure by, parties and candidates and political organisations. The Commission gave explicit advice on what needed to be done in this regard, but instead reform has been put off by referring the issue to the Commission on Government. If there was one issue which, in the public mind, required urgent legislative attention, I would suggest it was the matter of political finance. The failure of the Government to act on this matter is regrettable. It leaves the Government open to the serious charge that, despite its support for much of the Commission's report, it is deliberately "dragging the chain" on this issue.

The same comment may be made in respect of the apparent unwillingness of the Government (and perhaps the Opposition too) to accept the need for the establishment of CICIC. The role of such investigative bodies continues to be debated in Australia. The ICAC in New South Wales and the CJC in Queensland have attracted their fair share of public and political acrimony and judicial review. No doubt, there is an important civil liberty issue at stake in their operations. But the fact remains that much of the conduct of public officials found by the Royal Commission to be "improper" was not "illegal" and not easily amenable to investigation, inquiry and report by existing agencies. In combination with such other accountability agencies as the Ombudsman, the Auditor-General and the proposed Public Sector Standards Commission, the Parliament could be assisted in discharging its accountability functions by the creation of a body which has the discrete function of dealing not only with "corruption" as a criminal offence but also "improper" behaviour by public officials.

The offices of the Auditor-General and the Ombudsman are not designed for this type of audit function or experienced in performing it. The Commission accepted that a special purpose body was required to perform the task. At the very least, however, the powers of the Auditor-General and the Ombudsman must be widened to ensure they are not restricted in their capacity to monitor all official conduct within the public sector. Moreover, if the Ombudsman is to be relied upon as the principal accountability agency in this area, in the absence of a CICIC, the office must necessarily be better resourced and funded to meet such public expectations than it currently is.

In some areas of needed reform identified or confirmed by the Commission, reform has either occurred or is in train. For example, the State now has freedom of legislation legislation which has already made its mark. Further, a review of the State's administrative appeals structure is close to completion following the recent publication of a discussion paper by the reviewers, even though proposals for such reform have been about in this State for a decade and more following the publication of WA Law Reform Commission proposals on the topic. Public sector management reform is also a live issue.

Additionally, the agenda set by the Royal Commission for detailed public consideration of important issues of public policy upon the establishment of a Commission on Government is soon to commence, and not before time. The Royal Commission saw the issues it placed on this agenda as important ones upon which a wide range of views needed to be expressed before recommendations were made to Parliament itself. As I noted earlier, the Commission on Government is intended to be "the people's inquiry", not a body susceptible to executive control or influence, with the responsibility to entertain a number of broad-ranging constitutional and administrative issues which had been identified through the Royal Commission's inquiries as bearing directly on the capacity of the Parliament to exact open and accountable government from the executive, and the expectation of the public that government will be carried out openly, accountably and with integrity. The Government has added, and continues to add other issues to the Royal Commission's list.

I am bound to say that the apparent reluctance of the Government to establish the Commission on Government, despite its early political undertaking to do so, by drawing out its creation for so long, does not auger well for the future of COG. COG, one might say, was a child conceived with considerable enthusiasm by the Royal Commission. Its gestation, longer than expected, was committed to the care of Government and Parliament, the latter under the continued influence of the former. The child now born has been given a tentative pat on the bottom and sent out into the world to find its own way. Its immediate adoptive parent is the Joint Parliamentary Committee responsible for its oversight. COG was intended by the Royal Commission to have the benefit of the guiding hand and expert appreciation of a person experienced in constitutional and administrative law. The Royal Commission, I know, considered such guidance, in the form of a full-time Chairman of COG so qualified, to be of the utmost importance to the success of COG, especially in meeting the two year deadline on its work. The unpreparedness of the Government to act on this considered advice is an indicator, of the "red spot special" variety, that the Government does not wish COG to disprove the aphorism "life was not meant to be easy".

The Premier's statement when he was interviewed on ABC radio soon after COG's membership was prematurely announced by him in Parliament, prior to consultation with the Leader of the Opposition as required by the Royal Commission and the COG Act, to the effect that "you don't need to be a lawyer to chair a meeting", on the one hand completely fails to appreciate the point of the recommendation concerning the Chairman, yet, on the other hand, is probably ample proof, should it be required, that the Premier well-understood the recommendation and intentionally desired to limit the likely effectiveness of COG in the performance of its functions. The assignment of additional issues to COG also suggests that COG is being used as the classical "inter-departmental committee" (IDC) which is created to make Government appear earnest about an issue full-well knowing that it will get buried in the committee process and, in all likelihood, forgotten!

From such an inauspicious start, COG will need all the help it can get as it struggles through its relatively short life. It will have to face a steep learning curve, especially without the type of full-time leadership recommended by the Royal Commission. I would venture to suggest that COG is certainly not, at birth, the child the Royal Commission had thought it conceived: not "Rosemary's Baby" perhaps, but maybe "Richard's Baby"! Nonetheless, many children blessedly surprise their parents and relatives as they mature, and my earnest hope is that COG will also do so by engaging in its deliberations with a full and proper understanding of what the Royal Commission envisaged its task to be. Unless it does, not only will the work of the Royal Commission be undone but the citizens of this State will have been short-changed.

 ENDNOTES:

- ¹ The full and proper name of which is the Royal Commission into the Commercial Activities of Government and other matters.
- ² Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct (Chairman G.W. Fitzgerald)
- ³ Independent Commission Against Corruption
- ⁴ Royal Commission into the State Bank of South Australia
- ⁵ Eg. the circumstances surrounding the Whitewater Affair in the US and corruption scandals in Japan and Italy, to refer to some well-known instances.
- ⁶ G. Richardson "A debt of Honour" in *The Bulletin*, July 12, 1994, p.16
- ⁷ With acknowledgment to A. Facey *A Fortunate Life*.
- ⁸ See *The Australian Concise Oxford Dictionary*
- ⁹ Report, Part I Vol. 6, par 27.2.
- ¹⁰ Report, Part II, para 1.1.31.
- ¹¹ The Report, Part II notes the numerous submissions which were received in response to an Issues Paper which was issued in November 1991, from Government, Opposition, political parties, academics, inherent groups and "ordinary" members of the public.
- ¹² Report, Part II, paras. 1.2.3 and 1.2.5.
- ¹³ Report, Part II, para. 1.2.4.
- ¹⁴ Report, Part II, para. 1.2.6.
- ¹⁵ Report, Part II, para. 1.2.8.
- ¹⁶ Report, Part II, para. 1.3.22
- ¹⁷ Allegation made by Hedy Cowan, Deputy Premier and Leader of National Party of W.A. both in Parliament and in the media. He was supported in this regard by Mr. Monty House, another National Party Minister in the Coalition Government. See, eg. transcript of interview of Mr. Cowan with Richard Utting on 6WF ABC radio, Friday, 14 October 1994.
- ¹⁸ See report in "The West Australian", Saturday, 15 October 1994.
- ¹⁹ Report, Part II, para 5.2.1.
- ²⁰ See, eg. Uhr, "Redesigning Accountability: From Muddles to Maps" *Australian Quarterly*, Winter 1993.
- ²¹ Odgers, *Australian Senate Practice* (6th Ed. 1991) p. 716
- ²² Fitzgerald Report, p.124.
- ²³ See discussion in this regard in Administrative Review Council (Cth.) Report No. 35, *Rule Making by Commonwealth Agencies* (1992).
- ²⁴ The phrase used by Mason CJ. in *Australian Capital Television Pty. Ltd. -v- Commonwealth* (1992) 177 CLR 106 at 137.

ROLE AND FUNCTION OF THE COMMISSION ON GOVERNMENT

**Mr Jack Gregor
Chairman
Commission On Government**

First, let me congratulate the organisers of this conference. It is very timely and very apt. They must have been gifted with second sight to predict so accurately when the Commission on Government would be established.

I also want to thank them for the opportunity of speaking to you at such an important conference just before the Commission on Government opens for business. It gives me an opportunity to tell you about how we plan to conduct the Commission's inquiries and the results we hope to achieve.

Before doing so, I should introduce one important caveat. The commission has only been appointed since Wednesday and we have only had one meeting, and that one brief. We have had no opportunity yet to get into any detailed discussions about how we are going to conduct our inquiries.

Therefore the following comments should be taken as indicative only and reflecting mainly my own initial thoughts. They are not cast in bronze and are likely to change in the light of opinions from other Commissioners and factors which emerge during the public consultations.

My job today is to address you about the role and function of the Commission on Government. Our function is easy to define. It is set out in the act. We are to inquire into the matters listed in the schedule to the act, add any others we think appropriate and report on them to the joint Parliamentary Committee and the Premier.

In doing so we are expected to consult widely and act openly. We have access to the Royal Commission records if we need them but the same confidentiality provisions attached to the Royal Commission also attach to us.

We need to bear in mind that the Commission is not a law on to itself. We are subject to supervision by the Parliamentary Committee, the media, the supreme court and ultimately the public at large. We will be taking appropriate care to make sure we conduct our affairs properly. The subject matter of the Commission's inquiries is quite capable of generating controversy, but we don't want the Commission itself, and its methods of approach, to become controversial.

I am the only full time Commissioner. My four colleagues are part time appointees. I feel sure the definitions of "full-time" and "part time" will be stretched to the limit at several points during the 21 months ahead. I look forward very much to working with them. They have my total admiration and respect. I think they will serve the Commission and State very well indeed.

While I will contribute to the investigative side of our inquiries, I see my primary role as simply getting the job done. We have a formidable task. We have more topics to consider and less time to do it in, compared with the most recent similar exercise, the electoral and administrative review Commission in Queensland set up following the Fitzgerald Inquiry.

EARC, as it has become known, covered part of the ground we will have to address. Some of this will be useful because we do not want to waste time revisiting areas already well explored, bearing in mind the differences between the two states. Queensland, you will remember, has a unicameral parliament.

There has been some public controversy about the time taken to establish the Commission in this state. From my viewpoint, that may fortuitously help our task, EARC was set up very soon after the Fitzgerald Inquiry, when the emotional, political and news media aspects were still running hot. That Commission seems to have done a first class job but I can't help thinking that its task was perhaps coloured and made more intense by the general atmosphere which then prevailed.

I see the purpose and role of our Commission as being chiefly relevant to the longer term. It is not necessarily a bad thing for the Commission that there has been a time gap since the Royal Commission submitted its reports. The pressurised environment of that time has relaxed to some extent and there is now more scope for a sober, contemplative and reasoned approach to the Commission on Government's assignment.

There has been time to reflect on what happened during the 1980s, assess what was good and what was bad and begin to form some ideas about how to do better in future. This can only benefit the processes and outcomes of the Commission's inquiries.

This conference also gives me the opportunity to give my understanding about what the Commission is and is not.

The 1980s' undoubtedly saw departures from standards the public expects to see in public officials. These departures can be attributed to both personal failures on the part of individuals and, as the Royal Commissioners argued, to possible inadequacies in our system of government.

The personal failings have been the subject of considerable political debate both inside and outside parliament, and they have been dramatically depicted in the news media.

I do not see the Commission's role as being involved in any way with these personal, or individual failings. Instead, we will be concentrating on the institutional arrangements in our public sector and the system of government in Western Australia.

Our primary role is not investigatory in the sense that the Royal Commission's was. Raking over the coals of material produced by the Royal Commission may be required to some extent but this is not our main mission and will certainly not be done for any political purposes.

It will be done to assess how these personal failings relate to the institutional and administrative environment in which they occurred. Such looking backward is unavoidable but it will be selective, instructive and brief.

I see the Commission focussed firmly on the future. My fellow Commissioners and I want to see positive outcomes emerge from our work. The Royal Commission cost taxpayers a lot of money and the Commission on Government will add to this, albeit much more modestly. It is important that we add value and generate worthwhile reforms which will stand up to 21st century conditions. We will not achieve this by dwelling too long on the past.

There has also been considerable controversy about section 5 of the act and whether or not it restricts the ambit of the Commission's inquiries. You will remember that section 5 says that the Commission is to inquire into the specified matters if and to the extent it considers those matters relevant to preventing corrupt, illegal or improper conduct.

From my viewpoint, I do not feel constrained by the wording of section 5. The words "corrupt, illegal and improper" serve to draw everyone's attention to the underlying reasons for the Royal Commission in the first place and, ultimately, the establishment of the Commission on Government. But there is no need, on my first reading, to interpret them narrowly as limiting the Commission's ambit.

I am mindful, too, of the Government's assurances in Parliament that the Commission was to be independent and free to conduct its business as it saw fit. This does not sound like a restriction to me.

As I said a moment ago, our job is to concentrate on how our systems of government can be improved to make it more difficult for public officials, entrusted with power by the people, to behave corruptly, illegally or improperly in the future.

In addressing the operation of section 5, the Commission will be mindful of its responsibility to act openly and consult widely. Before taking any decision on the relevance or otherwise of a particular specified matter, we will ensure that all interested parties, and the public generally, have had a full opportunity to put their views to us.

Section 5 also allows the Commission to consider other matters in addition to those specified in the schedule to the act. At this early stage, the Commission has not made any attempt to think about whether it may wish to widen its ambit to consider other matters.

I think we will be guided by the comments and submissions we receive from the public. If interested people put forward new ideas which we think are important and have relevance, we will consider them on their merits at the time.

We are also conscious that the Commission is part of a broader public sector reform agenda. The Government and Parliament are continually looking for ways to improve our public sector and systems of Government. I noted only last Saturday in the "West Australian" that there is a general review of the state's appeal tribunals and processes. There are approximately 46 tribunals which have been identified to date.

An administrative appeals tribunal is one our specified matters. The Commission will want to talk with those conducting the review to make sure we support each other and avoid duplicating effort. It is especially important that we don't annoy people by asking the same questions and collecting the same information.

The new Public Sector Management act and the strengthened Official Corruption Commission are examples of legislative change that have their genesis in the Royal Commission's recommendations. We will have to take the adequacy of these into account in our deliberations on those matters.

Our assessment of the electoral issues may be influenced by the real world outcomes from the current high court challenge on the one vote-one value issue. That case could be running at the same time as our inquiries.

The Commission will have to tread a path between avoiding needless repetition on the one hand and focussing our inquiries inappropriately on the other.

This brings me to the issue of section 6 of the act. Under this section, the Commission can decide that a specified matter has been adequately addressed by legislative or administrative action, or is of insufficient significance to merit further inquiry. If so,

the Commission can make a determination to that effect and cease work on that matter.

I see this section as a sensible provision aimed at preventing needless repetition of work already done and actions already taken. It would be damaging to morale and counterproductive if the Commission were forced to go over ground which in its own mind it knows has been adequately dealt with.

But the reverse case is equally pertinent. If the Commission feels that legislative or administrative action by the Government, taken in response to Royal Commission recommendations, could be improved still further, we are at liberty to make such a recommendation. The Public Sector Management act and the Official Corruption Commission may well fall in this category.

The Premier has indicated that the Government will take whatever action it considers appropriate immediately to improve our systems of government, without waiting for the Commission on Government Reports. This is entirely appropriate. It is both the prerogative and responsibility of government to do so.

However, the government has also indicated it will consider any subsequent recommendations by the Commission for further improvement on their merits. In this way, there is scope for the Commission to add value to Government actions already taken. This too is entirely appropriate.

In conducting its inquiries it will be useful to consider the fundamental principles stated by the Royal Commission. You may remember the discussion paper issued by the Royal Commission during the first phase of its work. The paper was intended to stimulate public debate and generate submissions for the Commissioners to consider in preparing its part ii report.

The Royal Commissioners spoke about three key needs which our systems of government must meet, namely:

- * there must be public confidence in the integrity of our government systems;
- * the executive government must be accountable to the parliament and people; and
- * the government must be able to operate effectively in the public interest.

The discussion paper then went on to build on these principles by listing five general issues for discussion. These were:

1. Open government;
2. Accountable government;
3. Integrity in government;
4. Ethical supervision of the public sector; and
5. Government in commerce.

It seems to me that these issues remain highly relevant today. Obviously they will be in the forefront as we proceed through our inquiries.

I will divert for a moment to discuss the fifth item I mentioned - namely "Government in Commerce". It seems to me that this is especially significant since it was the key issue in the so-called "WA Inc" episodes. The government of the day argued that taxpayers would gain some relief and the government could provide

more and better services if public sector revenues could be augmented by dividends from profits made through commercial ventures. Now I know there are many counter arguments to this proposition but I do not have time to cover them all here.

I raise the matter simply to introduce another aspect of the Commission's role which hitherto has received little attention. I speak of the question: "What is the core business of government"? It seems to me that questions relating to systems of government cannot be divorced from consideration of what government is supposed to be doing.

Ultimately, this question cannot be answered in a cold, rational way by a Commission such as ours. What government should be doing is what the people want is to do, as determined through the political process and in the light of what public services cost.

However, the Commission will have to address itself to this question as one of many important considerations in shaping the direction of its inquiries. Here again I am conscious that the government is already taking action on public sector reform. Its reforms are aimed at making government more efficient and effective and, again these steps should not be held up pending the commission's reports. But I hope we can contribute positively to the public sector reform process as an essential part of our total brief to improve our systems of government.

The Royal Commission received one hundred and thirty submissions following release of its discussion paper. We hope to review these submissions as part of our inquiry. They will obviously be an essential starting point.

For that matter, the whole of the Royal Commission's part ii report will be a key document in shaping our approach to both the public consultations and our analysis of the submissions we receive.

The term "Systems of Government" could be taken to include Commonwealth, State and Local Government. While we will be looking at the modes and types of interactions between the Western Australian and Commonwealth Governments, our inquiries will not be directly involved with Commonwealth Government administration. This is outside our ambit. Our focus is only on the state government level.

But I am assuming this includes local government, for which the state is ultimately responsible. Local government did not feature very prominently in the Royal Commission's inquiry but there is little doubt it should be included in our brief. This follows because of the clear legal relationship between the state government and local authorities through the local government act. There has been evidence of corrupt, illegal and improper conduct at the local government level and in such cases there can be a responsibility on the part of the minister for local government to intervene.

Fortunately, as you all know, we have as one of our commissioners a man very well versed in local government affairs. We will be drawing on his experience and counsel for this aspect of our work.

I want to look now at what might be termed the key success factors for the commission. I will group these broadly into three categories: process, outputs and outcomes.

I emphasise here that we have yet to decide finally our modus operandi. That will occur over the next month or so.

On the process side, I see the key success factors as follows:

The first is just to do justice to the 24 specified items in the schedule 1 of the act. Some of the 24 topics lend themselves to grouping into logical sets of issues which

we may be able to consider as a block. We will also have to think carefully about the order in which we tackle the agenda because some matters clearly will take longer to work through and merit more attention than others.

I don't want to get into too much detail today but I will take just a moment to discuss staff and resources. The government has allocated \$1.5 million to cover the Commission's costs this financial year. Because the financial year is nearly half over, nearly all of this money will be spent in the first half of 1995. Our level of effort has to build up very rapidly in the new year and we will be conducting preliminary operations during the remainder of 1994.

One essential part of this is to assemble the human resources needed to perform our assignment. These people, along with the help and support of the whole community, are the keys to our success.

Under section 14 of the act we can hire contract staff and put work out to contract. We will be doing both, but we will have a firm eye on the budget and the need to get real value from any contract we make. All of these contracts will be subject to supervision by the Parliamentary Committee. Wherever possible we will call for competitive bids for all major contract assignments. The time available to conduct the tendering process will be short and this will place extra burdens on bidders and Commission staff alike. But given the short time scale and full schedule, I ask everyone to bear with us. We will try to give as much notice as possible.

While we will try to maintain a strong focus on simplicity and common sense in our approach, we inevitably will have to deal with complex legal questions and analyse existing and proposed statutes. We will be contacting the Crown Solicitor frequently, I'm sure, but he is unlikely to have the resources available to meet all of our needs, given the many other demands placed on him. This means we will have to consider appointing a counsel assisting. I have not discussed this with my colleagues as yet but if they agree, we again will call for bids from qualified legal firms and individual lawyers to supply this service.

Under section 15 we can second staff from public sector departments and agencies. This we will do also. The Commission needs senior public servants who are familiar with our present systems of government, can tap into the resources of government as a whole but have the flexibility of mind to see where things can be done better.

Again, we will call for expressions of interest through the public sector notices and we will be selecting staff on the basis of merit. I am conscious that chief executive officers of departments and agencies will not thank us for taking some of their better people and we will have to negotiate mutually satisfactory arrangements in most cases. Our objective will be to gain the capability and experience the commission needs without causing too much disruption to the public sector and without harming in any way the career progression of the officers concerned.

The second factor under this heading is the need to satisfy all interested parties that they have been heard and their views properly considered. In doing so we must act openly and consult widely, as I said earlier. We will, of course, advertise our hearings and call for submissions. We plan to produce discussion papers in advance and to hold seminars. Some of these will be in regional centres. In this way we hope to build public awareness and to stimulate the widest possible debate about the important issues before the Commission.

We plan to use imaging technology so that all material submitted to us and produced by the commission will be available to everyone promptly - the same day, I hope.

Our reports, however, will remain confidential while they are being prepared. I think it is only fair that the Commissioners have the opportunity to form their views on each reference in private before submitting them to the Parliamentary Committee and the Premier, who are the first recipients intended under the act.

The Chairperson of the Parliamentary Committee is required to table reports he receives from us on the next sitting day. The act also provides for the defacto tabling, and hence public release, promptly if Parliament is not sitting. There will be no delay therefore in making our reports public.

The third process factor will be developing a constructive working relationship with the joint Parliamentary Committee. The Committee will effectively be our link with Parliament as a whole and will receive our reports.

I see the need for a genuine partnership between the Commission and the joint Parliamentary Committee. The Committee will monitor and review our performance. While the Commission is independent, we are really answerable to the Parliament, through this special standing committee. It is our conduit to Parliament and therefore merits our wholehearted cooperation and support.

The joint Parliamentary Committee will also be examining our reports and debating them. This means the ultimate outcomes from the Commission's work will be strongly influenced by this examination and the reports the Committee makes in turn to Parliament. For this reason, I see the Committee as an integral part of the total exercise. It has a positive role to play in contributing to the Commission's inquiries and in achieving the beneficial outcomes we are all seeking. The Committee will have a major responsibility, as will the Commission, for the final results.

The fourth matter is the need to tap into all of the relevant information resources available, not only in Western Australia but also interstate and overseas. We hope opinion leaders in learned institutions, universities and the private sector will take the trouble to make submissions.

The final success factor I will mention concerns the need for the Commission itself to reach for and maintain the highest possible standards of integrity and fairness. We can gather information from far and wide, be guided by the best brains and experience available and receive cogent submissions from august bodies and individuals, but in the end we should and will be judged on what we produce ourselves. We are very conscious of this. It is sobering, I can assure you.

Having discussed the process questions, I turn now to mention possible outputs from our work.

These, of course, are mainly reports - paper, in other words. These we deliver, as I have said, to the Parliamentary Committee and Premier respectively.

Although we have not decided finally, our preliminary thought is that we will report as soon as we have finished work on a particular reference. As I said earlier, we may decide to group some of the references and combine them in one report for that group.

I suppose another output is the body of information we collect from those who make submissions and the documents we produce ourselves during the various inquiries. People can read all of this if they want to and take copies.

There is also the complete record of all submissions, material produced and files which the commission will hand over to the premier at the end of our assignment. I presume these materials will become part of the state archives.

The delivery of our reports will end the matter as far as the Commission is concerned. We will, of course, be happy to answer any questions about our findings and recommendations.

But how, or if they are to be implemented will be questions for others. Once we submit our reports, we will move on immediately to the next item. At the end, when all reports have been presented, that will be the end of the matter for us. We think it would be ill-advised and probably counter-productive for us to make any attempt to influence or guide the course of events which follow the issuing of our reports. Their implementation will not be our affair.

However, based on my experience of 8 years on the bench of the Industrial Relations Commission, I can, with comparative safety, make some general observations about outcomes. Firstly, some people will tend to view the Commission from their own perspective. They will hope to see their particular arguments or initiatives emerge as recommendations in our reports. The very advent of the Commission and its open processes will tend to create expectations, some of them unrealistic. I fear many of these will be dashed or realised only in part. We cannot be all things to all people and won't try. We ask people to bear this in mind.

As to final outcomes, the experience of EARC is instructive. Some of the legislation recommended by EARC was introduced into the Queensland Parliament late last month. More will be introduced this month, some four years after the exercise began.

The Government of Queensland has been forming its own view of the EARC recommendations through normal departmental processes, but decided to await a full debate in its Parliamentary Committee, which in Queensland consists of seven members, before taking a public stance on the issues. There has been much soul searching and behind the scenes discussion, but I understand what has emerged bears at least some resemblance to EARC's original recommendations.

So I just want to make this simple point: don't expect the world to change overnight immediately after our reports are submitted. I expect our reports will merely mark the beginning of another extensive and complex political and social process.

But in the end, the overall gainers will be the public at large. I am confident there will be significant changes emerging from the Commission's work. These changes may not be exactly what we recommend but they will represent real progress nonetheless. My four colleagues and I want to look back with some pride, able to point to reforms which we had a hand in starting. We want to be able to say that Western Australia is a better place as a result of the Commission on Government. Those participating in our inquiries will, I'm sure, have similar feelings.

One important outcome will be an increase in public awareness about our systems of government and the important topics the commission will address. I hope our consultation processes will lift the general consciousness about the importance of public scrutiny and the sovereignty of parliament.

A more aware and better informed public is perhaps the greatest safeguard of all against a repetition of the 1980s excesses, as well as being a positive stimulus for better public sector performance in the future.

I end by appealing for help. The Commission by itself is nothing. Its success will depend on the help and advice it gets from you, the public. The Commission is a conduit, a facilitator for the whole community to take part in its inquiries. The more help, understanding and support we get, the better the outcomes will be. I hope everyone here will take part and encourage others to do so.

ACCOUNTABILITY AND THE REFORM AGENDA

Professor P J Boyce

As the Second Report of the Royal Commission asserts, 'The accountability of government is at the heart of the matter.' Indeed, I would suggest that the notion of accountability lies at the core of all liberal democratic theory, sharing pride of place with the notion of 'consent'. My presentation this morning will first attempt to explain briefly how the Westminster derived political systems are failing to uphold the principle of accountability and why. Then I offer some thoughts on the reforms recommended by the Royal Commissioners and the task confronting the recently established Commission on Government.

Constant reference to the 'Westminster system' by parliamentarians and media commentators might imply that there exists a blue-print of correct practice from which any deviation would constitute a serious delinquency, but in fact there is no fixed model or prototype, for the system at Westminster has been evolving steadily since the text-book theorists started to celebrate it in the latter decades of the 19th century, and its four major overseas transplants - in Ottawa, Dublin, Canberra and Wellington - are modifications of the model to suit local circumstance. All serious practitioners, interpreters and proponents of something called 'the Westminster system' would nevertheless concur, I think, that its core indispensable element is the smooth straight line of accountability which runs from cabinet to parliament and from parliament to the electorate. In this respect it is markedly different from, but not automatically superior to, the congressional-presidential model of liberal democracy favoured by our North American cousins.

For that line of accountability to carry any traffic, certain conventions or unwritten rules of political behaviour must be understood and upheld - rules relating to the making and unmaking of governments, the role of the governor, and, perhaps most significantly in the context of our WA Inc. experience, to that elusive concept called 'ministerial responsibility'.

Criticism of the Westminster system is now very widespread in those countries where it is practised, not least in Britain itself. The principal focus of concern for almost all critics is the increasing dominance of the political executive over parliament and, correspondingly, parliament's failure to call the executive to full account.

This point is highly pertinent to the circumstances which gave rise to WA Inc. and the very considerable difficulties encountered in uncovering the scandal. Parliament failed miserably in this instance to call the executive to account. There were other failures of course; the unprobing print media for example, a somewhat timid public service, and a largely apathetic, unsophisticated general public, aroused into a fury of indignation only after it became crystal clear that many hundreds of millions of dollars of public moneys and private earnings had been lost for ever. But the institution which, according to the pure theory of our system of government must hold the executive to account, is the parliament.

In the heyday of the Westminster system's elevated status as an 'ideal type' of liberal democratic government, the executive was not as powerful or complex as it has since become; political party discipline within the Parliament was not so strong; and within the House of Commons a back-bench member could carve out a reputation for himself and fulfil a quite satisfying career outside the Ministry or Cabinet.

But what do we confront today, not merely in Australia at both national and state levels, but in many other parliaments of the 'old Commonwealth'? The general pattern has been for cabinets to operate more and more independently of the parliaments from which they are drawn and to which they are supposed to report. And because of the tightness of party discipline and the ministerial aspirations of most backbenchers, parliaments exert less and less restraint on government. In the smaller Australian state parliaments with small backbenches, and no doubt in some Canadian provincial legislatures as well, the political executive is even less likely to be called to strict account.

The reform agenda of the Commission on Government contains several proposals which address the decline of parliament, but a few of them are of relatively minor significance and some potentially significant reforms have been left off the agenda. I shall refer again to these shortly. Other major recommendations are uncontroversial and straightforward but nevertheless important. (For example: the already accomplished reorganization of public sector management, the need to extend the scope of the Auditor-General's responsibilities, and the need to strengthen parliamentary control over state trading concerns.) One's enthusiasm for a reform agenda will depend partly on what assumes the causes of WA Inc. to have been, and partly on how certain proposed reforms would impact on one's own political party fortunes.

The current Premier and some of his colleagues have stated their opinion from time to time that the cause of WA Inc. scandals was the accidental and isolated occurrence of there having been a bad barrel of apples installed in government from 1983. The basic institutions of government had not been found wanting, and the government elected in early 1993 was comprised of honest and honourable men and women who understood the ground rules of responsible government and would respect them to the letter.

I believe this interpretation of events to be simplistic and flawed. That the accountability processes were abused or circumvented more brazenly during the Burke and Dowding premierships than at any other time in this state's political history I would not dispute. Nor would I query the sincerity of initial commitment from the present leadership to honour the requirements of accountability, as they understood them.

But there is surely too much emphasis in this comfortable and self-serving interpretation of events on ranking the moral qualities of one party team in government as vastly superior to those of its predecessor, with little or no account taken of the peculiar circumstances of the period, the weakness of institutional constraints, or the inherent moral weakness of human beings of all political persuasion in the face of compelling political temptations. Certainly in the last resort, personal moral choice is the cause of political corruption, but it is political institutions which create the discipline and culture which help inform that moral choice. I therefore find myself in some agreement with the submission of the Royal Australian Institute of Administration (to the Commission) that the Westminster system is not the solution to WA's problems; it is itself part of the problem.

The unpleasant fact is that no government feels very comfortable with the full requirements of accountability and no government wants a parliamentary system in which the executive does not control the numbers. Indeed, because an opposition looks forward to the day when it will control the reins of government, we probably should not look to parliament itself to initiate radical improvements in the processes of accountability. These must originate with the general public, through opinion leaders.

Before discussing the potential influence of the Commission on Government and the more contentious issues awaiting its attention, I should express a view about the credibility of the Report which gave birth to it. With a certain bravado I suggested to another audience exactly one year ago¹ that although the Second Report deserved to be taken very seriously (especially in the light of findings in the First Report), the Royal Commissioners had been given an impossible assignment-impossible because of the terms of reference presented to them, because of the limitation of time for serious consideration of necessary reforms, and because of the inevitable difficulty presented to legal practitioners in handling slippery matters of political process which do not easily lend themselves to legal discourse. Let me spell out these three concerns. I do so because of the unkind assessment some parliamentarians have made of the Second Report.

The Commissioners' terms of reference required them not merely to inquire whether corruption, illegal conduct or improper conduct had occurred, and whether any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings, but also whether 'changes in the law of the State, or in administrative or decision making procedures,' were 'necessary or desirable in the public interest.

It would be difficult to imagine more open ended terms of reference than this. Although it might be possible to identify defective procedures of accountability in a political system, the scope for remedial practice is almost unlimited. Certainly there was no unanimity within the group of Commission consultants as to how far into the political system one needed to probe to do full justice to the government's brief, and we faced a strong temptation, not always resisted, to canvass any reform that held promise for the betterment of the machinery or processes of government in W.A.

The second major difficulty facing the Commissioners was the extraordinarily tight time frame within which they had to undertake their examination of the political system between late completion of the first Report and the deadline for submission of the Second Report. Because the investigations of more than a dozen episodes of government business dealings required more time than had been originally allocated, the Commissioners sought two extensions of deadline. By the date of presentation of the first Report (August 1992), barely two months remained for the Commissioners' focussed consideration of the issues of political and administrative reform. Admittedly a first draft of the second Report had been in preparation for several months, being principally the handiwork of resident legal counsel, Michael Barker, and a legal consultant from the Australian National University, Professor Paul Finn, but involvement of the Commissioners themselves at that stage was of necessity perfunctory and spasmodic.

The Commissioners faced an awkward dilemma, because they were well aware of the mounting costs of the Commission and the increasing impatience of government which was heading towards a critical election. They knew that to recommend a transfer of responsibility for further investigations to a yet-to-be established Commission on Government would generate public cynicism and a corresponding decline of community interest in reforms of any kind. They therefore decided to review the draft placed before them and proceeded to work through it at breakneck speed. They made considerable refinements to the document, but it was by now too late to re-arrange its structure and basic thrust.

The Commissioners' difficulties were compounded by the fact that two very different sorts of expertise were required for the two Reports. The first inquiry belonged exclusively to legal counsel and members of the judiciary; the second required an admixture of constitutional legal expertise and an understanding of political processes, especially the conventions of responsible government. As indicated elsewhere in this paper, neither the legal consultants nor the Royal Commissioners seemed entirely comfortable in confronting issues of political process, especially those relating to ambiguous or contested conventions of ministerial responsibility. The sphere of statutes, regulations, codes and tribunals, where authority is specific and enforceable, seemed more to their liking.

What then, can the Commission on Government hope to achieve? Should it confine its attentions to what it thinks the Government might accept and remain in consultative mode with government before it releases recommendations? Or should it set its agenda priorities without any regard to how the political executive, the parliament or the wider community might receive its recommendations?

As you might expect, my hope is that the process will fall somewhere between these two modes and also that the Commission might ask searching questions about the entire fabric of our political culture, in addition to institutional reform. The Commissioners should investigate fearlessly and without constraint but tailor their recommendations in part to what they think their major target audiences might be persuaded to accept, but all the while indicating in their reports, without apology, the course of action which they would in the best circumstances prefer. Had the Royal Commissioners, or more particularly their advisers, been a little more sensitive to the likely reactions of the major political parties to one of their key recommendations, a reform of the electoral system, the then Opposition might not have been afforded such an easy excuse to rubbish the whole Report. I have to say that despite many hours of reflection on this matter I still cannot discern a direct link between our malapportioned electoral system and the causes of WA Inc., though I can appreciate that if parliament is to be strengthened as an institution of accountability, it will be highly desirable that all major political parties feel comfortable with the electoral system. Unfortunately the National Party seems to have interpreted the Report as being totally hostile to regional weighting's and to have closed its mind to any revision of the electoral system as a legitimate part of the reform agenda. I wish fervently that the Report had worded discussion of this issue differently, so as to avoid the apparent alienation of the National Party.

The Second Report proposed that the Commission on Government consider changes to the basis of electoral representation in the Legislative Council and any other mechanism necessary to make that chamber 'the primary review agency of the public sector'. The proposal that our Legislative Council be converted to a genuine house of review is as critical as any in the Report, and although I see little prospect of the present government allowing such a profound change to occur, I sincerely hope that the Commission will not be deferred from considering it.

A genuine house of review would not reflect party alignments in the lower house and preferably, though not necessarily, would be free of any endorsed political party members. Because no ministers would be drawn from the upper house and because the government would not command an automatic majority in that chamber, debate and inquiries could be pursued disinterestedly and without fear or favour. On the other hand there would not be any expectation that the upper house could usurp the role of government. The Royal Commission Report suggested that it would be inappropriate for a house of review to exercise the power of rejecting supply, but I know there are some serious analysts who would wish a reformed Council to retain this right. I can see arguments for and against, though my preference would be for a Council which could exercise real influence through a delaying power and the sheer weight of non-partisan talent in its ranks without needing the power to reject supply. Paradoxically the House of Lords, archaic and anachronistic body though it is, exercises a role broadly in keeping with what I have in mind.

One avenue of reform down which the Royal Commissioners were reluctant to tread was revision of the Western Australian constitution. I regretted this at the time and regret it even more in retrospect. It is not easy to demonstrate that a new or streamlined constitution would directly reduce the risk of corrupt or improper behaviour by government, but there is little doubt that the constitution needs revision - if only to make it intelligible and to give the community a sense of ownership or proprietorship of its political system, a point which has been forcefully argued in public by my former colleague, Patrick O'Brien. I do not get the impression that either parliamentarians or many members of the legal profession would really welcome a streamlined constitution which is intelligible to the layperson and which emphasizes popular sovereignty. This is probably not the

occasion on which to initiate detailed discussion of what a new constitution might contain (whether for example it should enshrine a bill of rights), but I would see benefit in the constitution containing a simple description of responsible government and the principal conventions which underpin it.

We are very wary of looking to American models from the vantage point of our somewhat smug and unduly Anglo-oriented political culture, but North American experience reminds us that constitutions are not simply a body of rules but an expression of the moral consensus which underlies those rules. The constitution of Western Australia is an unintelligible, untidy assortment of colonial documents, some of them amended, which (as Campbell Sharman has written) remain 'silent on several key aspects of the operation of responsible parliamentary government'. It contains no explanatory preamble, and there is no mention in it of the office of Premier, no direct reference to Cabinet, nor any reference to the procedures through which the formal executive powers of the Crown are to be made responsible to the wishes of elected officials. One might be forgiven for suspecting that the designers of our constitution, and their contemporary accomplices in our parliament and the legal profession, were or are intending to deter the citizenry from acquiring knowledge of or interest in the state's constitution.

This all relates to the political education and sophistication of the community to which government is supposed to be accountable through parliament. The odds are currently stacked against any sustained push for public enlightenment. Yet the overwhelming majority of Western Australians would almost certainly be incapable of recognizing or defining the essential features of the Westminster system, which is so regularly extolled in hollow or misleading rhetoric. And for that reason they are unlikely to know how the processes of accountability should be played out.

The Second Report lays considerable emphasis on the need to develop a strong committee system in the Parliament. While I share the Royal Commissioners' enthusiasm for the ideal of a strong system of bipartisan investigative and monitoring committees, I have grave doubts that this ideal can be realized within small Westminster-style parliaments, where government backbenchers, relatively few in number, will be understandably hesitant to embarrass the ruling party, and where opposition-led probings will be greeted by a sceptical public as routine partisan attacks.

One serious issue which was addressed by the Commissioners only perfunctorily and about which they ventured no recommendation in their long list of possible reforms was ministerial responsibility. Chapter 4 contains some sensible observations on the twin conventions of ministerial responsibility and correctly underlines the distinction between a breach of these conventions and 'improper conduct', as understood by lawyers, but Commissioners demurred at the idea of prescribing a precise role for Cabinet in our system of government and offered as an excuse for avoiding advice on ministerial responsibility the wide divergence of views evident in parliamentary practice and scholarly interpretation. The limit of their prescription in this area, apart from asserting the need for Cabinet records to be kept, was the establishment of a code of conduct for Ministers.

Perhaps the Commission on Government could prepare a discussion paper on the slippery but central concept of ministerial responsibility. There is not quite as much variety of interpretation, at least among political scientists, as the Royal Commissioners imply, and if it is to be left indefinitely in the too-hard basket, the case for abandoning Westminster principles gathers strength. "Ministerial responsibility has ceased to be a sword in the hand of parliament and has become a shield in the arm of the executive," as the Institute of Public Administration paper submitted to the Commission complained.

A final personal plea is that the Commission on Government will not recommend the establishment of yet more watchdog agencies. There are probably too many already in this state, and several of these are currently seeking wider powers.

Moreover, I share the view expressed in one of the submissions to the Royal Commission in 1992 : that there shouldn't be too many new controls on the work of government agencies. 'Progress needs to occur through an appropriate balance of micro-control provisions, such as codes of conduct and whistleblower legislation, and macro-level initiatives, designed to develop a culture of integrity and performance in the public sector generally'.

I wish the Commission on Government well as it embarks on its two-year assignment. Even if some of its final recommendations are not well received by Government, it may succeed through discussion papers or seminars in raising the level of community interest in the health and welfare of our body politic.

More than community interest is required of course. We need some profound changes to our political culture as well, changes which must be informed by moral and ethical perspectives as much as by new institutional arrangements.

ENDNOTES

¹ Much of the following comment on preparation of the Second Report is reproduced from my paper to the 1993 conference of the Samuel Griffith Society, published in Upholding the Constitution, Vol 3, Melb.1994, pp68-70.

PARLIAMENT, THE EXECUTIVE AND ACCOUNTABILITY: THEORY AND REALITY IN CONFLICT

Barry MacKinnon

Liberal Leader and Leader of the Opposition from 1986-1992

(Edited Transcript)

Thanks very much Harry. I didn't know that history lesson about Charles Latham but I don't envy him, six years in opposition and Leader of the Opposition is enough, nine and a half years would have been terrible I would have thought. And the Dockers, well I'm Chairman of the Company that holds the licence and I'm going to be a Docker and all of those of you who are interested in football- and many of you would be- you'll be pleased to know that we are double the budget in terms of where we expected to be at this moment in time with membership and money. We have got some excellent players and we're looking forward next year to beating the Eagles. I think it is going to be a great thing for Perth and the competition.

To get to the matter at hand, the topic I was asked to address is *Parliament and the Executive: Accountability Theory and Reality in Conflict*. I take that to be a request to address a point that in fact the Commissioners made in their second report where they said words to this effect:-

'The proper accountability of the executive to the Parliament is a lynch pin in our system of responsible government, but the means and measure of that accountability are the matters of real importance.'

To address that question I think you need to look at three central questions:-

- Did the proper accountability of the Executive to the Parliament work?
- Secondly, was the Parliament informed during that time or uninformed?
- Finally, was the Parliament effective or ineffective?

The answer I think you could say right at the outcome is that there is no definitive answer to any of those questions. To each of those questions posed you could say yes, it did work in part or no, it didn't. In fact some of course would say- in fact a journalist asked me before I came here today- wasn't it a fact that the system failed totally, it let us down? In fact I would rebut that proposition by saying that if there had been a total failure of the system, there would have been no Royal Commission, the ALP would still be in government and, in fact, the leading lights that have been involved in the Royal Commission inquiry would not be in gaol.

If it did work in part, but failed in other areas though, what then did go wrong? Was it the people, or the system at fault? If it was the people, which people and why? If it was the system, what parts of the system and finally where should we look in light of this experience to improve and I quote from the Royal Commissioners again:-

'The proper accountability of the Executive to the Parliament'.

Clearly in my view it was largely the people at fault and not the system, although the system as I come to explain to you in a moment, was at fault in part. The Royal Commission documented that very, very clearly. In fact the quote on the front of the pamphlet that we are looking at today really spelt it out and just let me read that to you.

'The government system of this State exists to serve the interests of the people of Western Australia. Our findings and observations provide compelling evidence that this fundamental purpose has not always been upper most in the minds of our elected and appointed public officials in some instances far from it.'

From my observations through these times- and I have always felt that this was the case- the leaders in government were motivated by power, political power and its retention, nothing more and nothing less. They weren't there to look after the interests of the people, the power had been won, the power was seen to be effective in pursuing the political goal of retaining political power and hence, the ends justified the means. There was to that extent, therefore, in my opinion no morality in politics to those people- that in my opinion was their fundamental failing- and the system of course was to be ignored, if it got in the way of the overriding objective, power and the retention of power.

There are plenty of examples if you look to the Royal Commission of what I mean and I just want to quote some of them to you. In the first report they were talking about leadership when they said:-

'Mr Burke and Mr Parker not only kept from Cabinet the enormity of the problems and the extent to which public funds had been used in futile attempts to solve them but on some occasions actively misled their Cabinet colleagues.'

The full extent of their deviousness may never be known. We call to mind Mr David Parker's statement in evidence before this Commission that 'Government worldwide is built on the basis of concealment'. Those were David Parker's words. This reveals a profound misconception in the proper role of government, it is a misconception which unfortunately seems to have been commonplace amongst some of his government colleagues and in particular the Premier, Mr Dowding. Those words must be ringing, or should be ringing in people's ears today and I am going to be critical in a moment of *The West Australian*. Let me commend them today on their Graeme Richardson editorial, I think it is timely that people are reminded that people who in politics are lauded by some for their political cleverness to mislead and deceive, were the same sort of people that the Royal Commission talks about and I think they were right to editorialise as they did today.

So clearly the principle that deceit is a fundamental and central principle of government in my view permeated the process of government throughout those years. If you look at question time, just the simple basis of question time in the Parliament, which is one of the fundamental areas of the Executive's accountability to the Parliament- this is what one of the journalists whose job it was to draft answers to Parliamentary questions said in the Royal Commission:-

'There was some degree of anticipation that applied to answering parliamentary questions, that anticipation would extend to, if you like, issues that weren't addressed into the question themselves. In short, those answers or particular questions were answered in a way that was more of an art form than an exact science.'

Question from the Commissioner:-

'Does that mean that you accept that the answer was inaccurate as drafted by you?'

Answer:-

'Yes, I accept that.'

Answers to questions were of course total deceit and if you thought that the Parliament was being misled or ignored, it was highlighted I think by the fact too that so too was the Executive (evident from my earlier quote). Not only were the public to be kept in the dark about these arrangements, but Cabinet also was not given the full picture on 28 July, 1988. It was about the PICL deal. Mr Dowding did not explain to his colleagues the connection between the purchase price and the size of the problems at Rothwells. He did not explain that the Government was deliberately building up the value of PICL by a support mechanism. If Cabinet had been aware that the government was effectively paying twice by undertaking a contingent liability to increase the value and then claim the increased value, Cabinet may well have had a different view of the proposal. So clearly if you look at the question of were the people to blame, the Leaders at that time were clearly a central part of the problem. We in Opposition often knew the answer, we knew the facts, we might not have had the proof, but the answer that was given was wrong or it was avoided.

Just to give you an example, through the whole of the Teachers Credit Society crisis, we were getting information on a regular basis, directly from the people involved, we knew the facts- the people weren't at liberty of course to expose themselves at that time- yet the answers we received in the Parliament, we knew the answers were clearly wrong. But to prove that from Opposition of course without documentary evidence was very, very difficult indeed. I repeat that in the pursuit of power it seemed the ends always justified the means. I think it is also wise to remind ourselves, because I want to comment again on this later, to give and gain favour appears to have been part of the game as a means of retaining power.

The list of donations that were given at that time and in the words of the Royal Commission, 'their size' (their words not mine) was quite extraordinary. And again I think it serves well to remind us as to exactly what occurred at that time. Mr Anderson, \$366,000; Mr Bond, \$2,000,038; Mr Connell, \$860,000; Mr Dempster, \$512,000; Mr Goldberg, \$425,000; I could go on. The Commissioner's said the size of the donations was quite extraordinary particularly when compared with the size of donations made before Mr Burke became Premier. In many instances, there is an obvious connection in time between donations and events in which the donors were concerned with Government. It is not surprising therefore that the circumstances should give rise to suspicion that improper practices might have occurred and that undue influence might have been exercised.

To give you an idea of the comparison whilst I was not involved, and I repeat not involved and never had access to the information of who was donating money to the Liberal Party, I was informed that the largest single donation, the largest single donation that we received through that time was \$80,000 - the largest. It enabled the ALP of course prior to the 1989 election to out spend us by \$3 or \$4 or more to 1 in the advertising stakes. Leadership, I repeat, was clearly central to the problem. Were there other people other than the leaders?

Of the Ministers who questioned, none stood up to be counted. We see when we look back at history that Arthur Tonkin resigned, but he resigned on the question of electoral reform. Barry Hodge we now know from the Royal Commission documents spoke out against some of the issues but didn't say anything publicly nor did he resign. Others it seems were content to accept, or not to question, and when questioned in the Royal Commission couldn't recall. Julian Grill of course, it must be acknowledged, did resign but still to this day has never admitted that he did anything wrong. The Ministers must share part of the blame and the back benchers also by and large were content to accept it. As a back bench member of the Government, but an experienced member, an MLC when questioned in the Parliament said this:-

'I did not know where the money was coming from and I did not ask any questions'.

He went on further to say:-

'Ask no questions, and you are told no lies'.

It would seem the only ones prepared to stand up and resign were Ian Alexander over the Swan Brewery affair and Frank Donovan over the Notre Dame issue. But with both due respect to those gentlemen who did at least have the principles to stand up on those issues, it was a little bit like shutting the gate after the horse had well and truly bolted.

Some people would say well, doesn't the Opposition have to share part of the blame? It might sound surprising to some that I admit that, yes, I think we do have to share part of the blame. In two particular instances, we had a unique opportunity to win the 1989 election and failed to do so, we failed because we did not have the right cohesion at the time. The key factor was that we didn't have a coalition and that caused difficulties through the campaign and in fact right into the last week where the crucial decision, or the crucial issue, was a statement made by Bill Hassell that was blown up I believe out of proportion by the media, but nonetheless because we didn't have a coalition and a good communication with the National Party it gave the perception of disunity.

That was a mistake and as a consequence we must share part of the blame, there was neither enough discipline within our own party to ensure that that Fremantle (Hassell) occurrence didn't occur, despite the fact that at that time we endeavoured to ensure that that didn't occur. After the 1989 election there is no doubt either- and I can speak with some feeling- that neither party was able to keep the pressure on as we might have otherwise been because of leadership pressures. I can assure you as a political leader with one eye over your back and one eye forward, it clearly isn't conducive to taking the fight as effectively to the government as you might want, and this of course was a crucial issue when we sought to block supply. Whatever you think about that issue, the key factor that ensured that we didn't in my opinion at the time was the question of leadership.

And finally, I think also the media must accept some responsibility. They did not pursue the Government effectively until after the 1989 election and in my opinion the grossest mistake they made was over the petrochemical guarantee. It was known- we knew we said so- everybody did prior to the '89 election- yet the media did not pursue the government. In fact, I still remember the day that Peter Dowding made his policy speech out at Karrinyup, we released information that very day. Dowding refused to answer questions and the media refused to pursue him, I think they were derelict in their duty and in particular *The West Australian*, as the major media source in this town, supported the re-election of Peter Dowding. It is astounding to me that the *Sydney Morning Herald* on the 7 January, a month before the election, editorialised about an election in Western Australia and this is what they said:-

'Mr Burke and Mr Dowding were soft touches. Their actions could cost Western Australian taxpayers a fortune by the time the hidden subsidies to the non-economic petrochemical plant are added to the public money that has gone down with Rothwells. The appropriate political penalty is for the government to be thrown out of office.'

The *Sydney Morning Herald* knew what the potential cost was at the end of the day, they knew what was wrong- it would seem that *The West Australian* at that time did not. That is not a bitter statement, I admit the mistakes that we made by us in giving them the opportunity of publicising our disunity in the last week of the campaign. But to not pursue that particular matter at the time (a mistake made not just by the West, but by the total media) was I think a grave mistake.

So it was in large part, in my opinion, the people who failed the system- the Government and in particular its Leaders must bear the brunt of the blame. The Ministers because they knew, and if they didn't know, they must have had a real good idea because I spent every other hour of my days in Parliament telling them so!

Likewise its back benchers, the Opposition played a part and also the media. So you can see as we all pretty well knew, but need to be reminded as I have said again, the people were to blame by and large, but not the system.

It may well of course be argued that the system we need not bother about, and I have heard this argument put forward if fact by many people on our side of the politics- that you don't need to bother about the system, its the people, and no matter what you put in place, if their badly motivated, dishonest, they are just going to pursue the retention of power, it doesn't matter what you put in place, it is not going to work. They're right in part, but only in part. I believe the system does have a role to play and can influence the decisions of the Executive and others on how they act and operate.

What was it that worked? What was it that failed, and if so, why did it fail? My belief is that the Parliament, as an institution through the WA Inc. years, in large succeeded. It succeeded in maintaining pressure on the Government. We did it relentlessly, to the extent that I was cartooned and all the rest of it, lampooned for being so persistent. But without an Opposition that was as consistent and as persistent at using the protection of the Parliament and the forums from Rothwells right through PICL to the Royal Commission, the facts would not have come out and the Government would not have been under pressure. Without the Parliament, I argue very strongly the People for Fair and Open Government would not have succeeded by themselves, neither would have the public nor the media. It needed the Parliament to be able to take the battle up to the Government through the use of debate, questions, committees- and in the end of course it was effective although it took us much longer than it should have. I'd also remind people (because they seem to forget) that the straw that broke the camel's back emanated from Parliament, I refer to a letter that I wrote to the Ombudsman at the time over the Stirling City Council affair. The Ombudsman wrote back and I would remind you that the Ombudsman is an officer accountable to the Parliament, not to the Government, saying words to this effect, that none of this will be cleared up until such time as there is a Royal Commission. The Royal Commission was announced the next day.

So it was in fact the Parliament by and large that maintained the pressure and I believe the Parliament in a large part did its job to the best of its capacity given the information it was given, and that's where it probably failed. Where it failed was through the lack of information made available to it and that limited its effectiveness and also, as I've said earlier, when the Opposition was diverted by leadership issues (from the time of the supply debate and onwards) that also limited the ability of the Parliament as an institution to take the fight up to the Government. I would also remind you that at the time neither did we have the support of Freedom of Information, the Auditor General didn't have access to information that he should have had and the Ombudsman's parameters were limited (as they still are) and the donations information that is now public of course was not available to us. So the system worked in part, but where it failed in a large part it was due to the lack of access to information.

Which brings me now to that formal question in light of all that, what should we do? I go back to the beginning, the quorum at the Royal Commission said the proper accountability of the Executive to the Parliament is a lynch pin in our system of responsible government. The means and measure of that accountability are the matters of real importance. If you believe as I do that the Executive will only be held accountable effectively through access to information, then we must strengthen the Parliament's access to information so that our accountability process can be improved, enhanced and strengthened. So in light of all that has happened, there are four things that I think should occur.

Firstly, we should strengthen the role and position of the Auditor General. Secondly, we should broaden the scope of the Ombudsman's areas of purvey and view. Thirdly, the question of political donations must be addressed and finally, the role of the Legislative Council needs examination. I'm not saying these things are all that needs to be done, but if you believe as I do, that information is one of if not the key

question or factor in accountability and the ability of the Parliament as an institution to hold the Executive accountable, then it is these type of reforms that we must focus upon.

The Auditor General

The Auditor General's role in the system is absolutely crucial. The Office of the Auditor General provides a critical link in the accountability chain between the public sector and the parliament and the community. We saw it in today's paper, it alone subjects the practical conduct and operation of the public sector as a whole to regular independent investigation and review. This function must be fully guaranteed and its discharge facilitated. The Auditor General is the Parliament's principal informant on the performance of the administrative system. Its why when you look at the second report that fully 25% of the recommendations of the Commissioners relate to the Auditor General. These recommendations go to such things as ensuring

- the independence of the Auditor General, so that he is answerable to the Parliament and not the Government;
- the Office budget is set by the Parliament and not by the Government; and that
- the tenure and powers which attach to the Office are improved (eg so that he may call for - 'such Cabinet documents as may be necessary');

There should be 'no claim of legal professional privilege maintainable against the Auditor General by the Government'. I can assure you that during the whole of the WA Inc years, the Opposition had good communications with the Auditor General, as an officer who is accountable to the Parliament and not the Government. Auditors' General should not be party political, nor should they be feared by Government.

The Ombudsman

The second area that I commented on was the Ombudsman. You have seen in recent days reports that over 40 agencies of government are not covered. The Opposition have been critical, let me say the Opposition aren't any saints, I took that matter up in 1991 saying that his purvey should be broadened. The Opposition said basically what the current government said- 'well we are looking at it and we are drafting the legislation'. Well it is time the legislation wasn't looked at and wasn't drafted, but introduced into the Parliament! Again the Ombudsman is an officer accountable to the Parliament, not to the Government, his access to information can assist that accountability process.

Political donations

The third issue- that of political donations- is a very thorny and difficult one for politicians and an issue easier for me to look at now as a non-member of Parliament. But the facts, as we look back over the Royal Commission and as recounted, make still amazing reading, amazing reading. My belief is that if the facts about political donations had been known it would have made a material difference to the question of the government's accountability. This is a matter for the Commission on Government to examine, and whilst I am supportive of some form of disclosure legislation, it must be acknowledged by the people who examined the question that it will damage the coalition parties in government more than the Labor Party. The Coalition parties rely almost solely for their income source on business donations, the Labor Party have a basic source from the union movement topped up by business donations. Where private donors feel threatened by public disclosure and have been threatened at times when they have been so disclosed, then that question must be looked at very carefully. Something needs to be done, but it must be done in a form which is not only open to assure accountability, but equitable from the point of view of the political parties concerned.

The Legislative Council

And finally to the question of the Legislative Council- one which caused me some sleepless nights when I was the Leader of the Opposition I can tell you! I find myself in agreement with the Royal Commission's recommendations eg Recommendation No. 27:-

The Legislative Council be acknowledged as having the review and scrutiny of the management and operations of the public sector of the State as one of its primary responsibilities.

If you are to have a Legislative Council (and I believe we should have a bi-cameral system) I have always believed that the Legislative Council's primary role should be one of review, not of legislation. Its reviewing role must be strengthened; the committee system should be given better funding and more status and stature; the roles of committees and of the council must be better identified and there should be more public involvement in these operations. The current Government in fact have had more Ministers appointed to the Legislative Council than the previous Government, and I believe that weakens its role as a house of review. I believe that this plays directly into the hands of people (and there are many) who are opponents of the Legislative Council. I am not saying that there shouldn't be any Ministers, but five is certainly too many-two or three at maximum in our Parliament.

As for the issue of electoral systems, a politically thorny issue in the Legislative Council in this State, but an issue which I personally believe to be a red herring. We should focus more on the role of the Legislative Council, not its method of election-when you look back historically at it and the Labor Party you see that they have always campaigned on the basis of winning control of the Assembly and never really have addressed as vigorously the matter of the Legislative Council. So I'm not a believer in electoral reform for the Council (furthermore, I'm a supporter of a weighted system of voting anyway to give people in the more distant regions equity in terms of their representation). What is more important is what the Legislative Council does and how he does it, not the method of its selection. I know that many people will disagree with that, but I think that their views are wrong.

In summary, I'll return to the three questions that I put, namely:-

- Did the proper accountability of the executives to the Parliament work?
- Secondly, was the Parliament informed during that time or uninformed?
- Finally, was the Parliament effective or ineffective?

In relation to the first the answer is no, because the people deliberately avoided that process in pursuit of the retention of power. The system didn't help because of some of the reasons I have outlined (eg it lacked the means of getting access to information to hold that executive properly accountable).

Secondly was the Parliament informed or uninformed?. Information was hard to come by. It was only gained by persistent effort, sometimes through the operations of the system, sometimes not, and sometimes through the persistence of the media and others. Was the Parliament effective or ineffective? Given the information available to it, I believe largely it was effective, and when it failed it was due to internal party problems, the National Party/Liberal Party tensions or the Liberal Party leadership problem. No system can hope to overcome the problems that people will present because they are either dishonest or ambitious and want to avoid the system, but we can surely improve the system.

My hope is that the Commission on Government will see the four areas that I have highlighted as having a priority- the strengthening of the role of the Auditor General, the broadening of the scope of the Ombudsman's area of purvey, political donations, the question of and the role of the Legislative Council.

The Royal Commission has highlighted, I believe, arguably the most infamous chapter in the public life of our state, or perhaps even our nation's history. If nothing changes other than the Government as a result of its findings, it will have been a failure and a major disappointment to me and the thousands of other Western Australians who fought so hard for its appointment.

THE HIGH COURT AND ELECTORAL REFORM IN WESTERN AUSTRALIA

Dr Geoff Gallop MLA
Deputy Labor Leader

The year is 1900 and the Commonwealth of Australia Constitution Bill is being debated in the House of Commons. Irish MP William Bedford supports the Bill as making a great advance in Australia's "national existence". He notes, however, that in the colony of Western Australia representation in the State's Parliament is, for the numerous residents of the Goldfields, "a mockery and a farce". Indeed he goes so far as to say:

... I would make it a condition upon the entry of this small colony into the Government Federation that she should, by a proper measure of representation, do away with an undoubted scandal which exists at the present time, and give full and fair representation such as other colonies do to the whole of the people within her borders.[1]

At the time of the 1897 election the four Legislative Assembly constituencies based on Coolgardie (4 out of a total of 44) contained 5,481 electors out of the State's total of 23,318 electors (ie. 23.5 per cent). The State's largest seat Coolgardie contained 2,080 electors whilst the smallest - Ashburton - contained just 54.

I regret to have to report that Ashburton is still the State's smallest electorate (with 9,135 electors at the 1993 State election) and that the electoral system is still a "mockery and a farce". Thankfully, however, this state of affairs was recognised for what it is in the Second Report of the Royal Commission into Commercial Activities and other Matters.

Accordingly the Royal Commissioners concluded that electoral review was "central" and of "vital importance" to their recommendations.[2]

For over one hundred years conservatives in the State's Parliament have resisted moves to establish electoral equality. Not even three election victories for a Labor Party committed to one vote one value in 1983, 1986 and 1989 were enough to convince Liberals and Nationals in the Legislative Council that there was a mandate for change. Malapportionment remains as the last vestige of the deformed version of democracy which came to Western Australia with responsible Government 1890.[3]

It is worth reminding ourselves of the extent and pace of change that has characterised the evolution of Western Australia's electoral institutions. In 1890 neither women nor Aboriginals could vote and there were property-based restrictions on the right to vote, plural voting allowed some to vote more than once, politicians were themselves involved in the drawing of boundaries, and malapportionment was accepted as a necessary fact of Western Australian political life.

Much has changed since then. Women gained the right to vote in 1899 but not the right to become MPs until 1920. Aboriginals, on the other hand, did not gain the right to enrol and vote until 1962, although it was not until 1983 that enrolment and voting became compulsory.

In 1904 plural voting for the Legislative Assembly came to an end but not for the Legislative Council until 1963 when the property qualification was itself abolished.

Western Australia was the first State to introduce systematic malapportionment through zoning in 1922 when the Mitchell National Coalition Government appointed Commissioners to draw electoral boundaries but only *within* zones defined by Parliament and not including statutory seats in the North West of the State.

The ability to manipulate outcomes by re-defining the zones or changing the boundaries of the seats in the North West remained a reality until 1987 when the metropolitan/non metropolitan boundary used in the Metropolitan Region Town Planning Scheme Act 1959 was incorporated into the State's electoral legislation and the statutory seats in the North abolished.

Evidence is available that politicians involved themselves directly in boundary manipulation as late as the 1970s and early 1980s. Of the 1975 redistribution Ian Thompson (MLA from 1974 to 1993) has said:

... one of the most unusual occurrences was just after the 1974 election when a Liberal-Country Party Government had been elected. I was invited to join a couple of other people kneeling on the floor of the Liberal Party meeting room to make a suggestion on where the electoral boundaries should be, because there needed to be a redistribution.[4]

The legislative change in the metropolitan boundary that followed converted Mundaring into a marginal Labor seat and consolidated Kalamunda as a Liberal seat. Labor MPs at the time called it a "Charliemander".[5]

It happened again in 1981 when 6,000 electors (mostly Labor voters) from several mining towns in the Pilbara were shifted by Parliament into the Kimberley giving it a voting population of 12,000 and reducing that of the Pilbara to 9,000. The Liberal Member for the North Province left the Party over the issue. The metropolitan boundary was also altered to include Rockingham, Wanneroo and Ballajura but not some of the hills' suburbs to the east.[6] Such "*jiggery-pokery*", to use Ian Thompson's words, has no place in a modern democratic state.

Nor, indeed, does malapportionment. The reasons are simple:

The bedrock of our electoral system is the right of each citizen to cast one vote. Each vote represents the view of an elector about who should represent him or her in Parliament. The principle of one vote one value asserts that each elector is equally important and has an equal right to promote his or her freedom and interest.

It does not make sense either logically or ethically to establish the right of a person to vote then diminish the value of that vote in relation to the votes cast by other. In an extreme case this would undermine the basis for community life itself by creating inequalities in the distribution of political power.[7]

Once vote weighting is accepted as legitimate it becomes impossible to anchor the electoral system on anything approaching a principled basis. Political and party interest replace principle. That this was the experience within each of the states has been well illustrated in numerous academic studies. Writing in 1960 Rufus Davis described the electoral experience of the states a mixture of "*adventure, heterodoxy and knavery*". He observed that electoral devices were used "*with a skill which even a fun-fair poker machine proprietor could admire*".[8]

Over the last three decades electoral review and reform has arrived in each of the States and Territories except Western Australia where both Houses are elected from a malapportioned system and Tasmania, where the Legislative Council is severely malapportioned. An attempt to finalise the process by incorporating a clear and simple definition of one vote one value in the Commonwealth Constitution failed in the 1988 referendum.[9]

The Labor Party sought unsuccessfully to reform the system by judicial review in 1982 when it took a case to the State's Supreme Court based on Section 73(2) of the *Constitution Act 1889*. That section requires that a Bill providing for the Parliament to be composed other than of "*members chosen directly by the people*" must be passed by an absolute majority in each House and submitted to a referendum of all electors.[10]

Since that time there have been significant development in judicial thinking that have led the Labor Party to try again - this time to the High Court. I refer of course to the constitutional entrenchment of the doctrine of representative government and the implied rights which follow from it, the spreading of the net of implications to State as well as Commonwealth laws, and the growing importance of international conventions and standards in constitutional interpretation. The cases involved in these developments are well known to you all.[11]

Three arguments are advanced in support of Labor's Contention that Western Australia's electoral laws are invalid:

1. The first relates to the implied requirement arising from the principle of representative democracy inherent within the Commonwealth Constitution and/or the State Constitution Act of 1889.
2. The second relates to the implied requirement of equality before the law inherent within the Commonwealth Constitution.
3. The third is based on Section 73(2) of the *Constitution Act 1889* and was referred to earlier in relation to the 1982 case.

In the short time available today I will summarise the first of these arguments, that is the implied constitutional requirements arising from the doctrine of representative democracy inherent in one or both of the constitutions. They are three:

- numbers of voters in electorates should be as near as possible to equal,
- variance between numbers of voters should not be excessive,
- voters are entitled to equal and effective representation.

Each of these represents a different way of formulating the test of democracy. It may be the case, for example, that the High Court will accept the implication that variance "should not be excessive" without endorsing the view that the numbers of voters "be as near as possible to equal".[12]

The High Court has ruled that freedom of speech is necessary to support the structure upon which our Constitution is based. As Justice Brennan put it:

... 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 judgements.[13]

Would it not also be a "*parody of democracy*" if people are given the right to vote but some votes are accorded more weight than others? Put in a nutshell that is Labor's case.

In defending the claim that there is a link between electoral equality and representative democracy the following points can be made:

1. Most modern representative democracies do accept the principle that the primary basis of representation ought to be population. Indeed many have established systems of proportional representation which embody the principle of equality of voting rights and the principle that equal numbers of votes should translate into equal numbers of seats.[14]
2. Even when we consider the Commonwealth Constitution it is important to note that Section 24 allocates seats in the House of Representatives as between the states according to their respective populations. Originally the distribution of seats was left to State Legislatures on the understanding that they would refrain from any action that was "ineffective or improper". If a State failed to exercise its power the State would vote as one electorate or if a State misused its power the Commonwealth could intervene to remedy the situation. In the event dissatisfaction at the arrangements made by the States at the first election led the Commonwealth Parliament to pass its own *Electoral Act* in 1902. Electoral equality was established as a principle with a tolerance of 20 per cent from the quota accepted so that local circumstances could be taken into account.[15]
3. Should the High Court reject or even dispute the claim that the principle of approximate numerical equality applied in 1900 they may still assert its relevance in 1994. In the *Theophanous v Herald and Weekly Times* Justice Deane quoted Inglis Clark's *Studies in Australian Constitutional Law* (1901) to the effect that the Constitution must be construed as a "living force" representing "the will and intentions of all contemporary Australians", both men and women, and not as a lifeless "declaration of the will and intentions of men long since dead". This would require them to adopt a contemporary understanding of representative democracy and its implications for the electoral system.[16]
4. The United States Supreme Court has held the view since the 1960s that vote weighting runs counter not only to the idea of democratic government but also to the principle of a House of Representatives elected "by the People". For the American Court "equal representation for equal numbers of people" is the "fundamental goal". In 1963 they put it this way:

How can one person be given twice or 10 times the voting power of another person in a statewide election merely because he lives in a rural area or because he lives in the smallest rural county?

Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote - whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.[17]

5. The Canadian High Court has been less fundamentalist in its interpretation of the "right to vote" enshrined in the *Canadian Charter of Rights and Freedoms* but it has made it clear that any departure from equality needs to be carefully justified by factors such as geography, history and community interests. They certainly stated that the first condition of "effective representation" was "relative parity of voting power".[18]

It is very important to note that the majority in the McKinlay case before the High Court of Australia in 1975 ruled that while the Commonwealth Constitution did not require strict equality, a degree of vote weighting may offend the requirement of Section 24 of the Constitution that the House of Representatives be "directly chosen by the people". In other words it is all a question of degree. Thus while the Court rejected the argument of the plaintiffs that the Commonwealth electoral boundaries were unconstitutional (and it is worth noting that at that time demographic changes had created disparities between the largest and smallest electorates but none more than 2:1) they did

accept the point that inequality could become so extreme as to offend the requirement "directly chosen by the people".[19]

6. For Labor's case to succeed it needs to establish that implications in either the Commonwealth or the State constitution extend to electoral equality. In the case of the former it will need to be further argued that the implication is more than simply a limitation on Commonwealth legislative power but that it also extends to the states. The Court has now established this extension in respect of the constitutional guarantee of freedom of communication. As Chief Justice Mason put it: "the concept of freedom to communicate with respect to public affairs and political discussion does not lend itself to subdivision". The analogy with electoral equality is easy to see.[20]

In Western Australia today the Legislative Council has 34 members half of whom represent 26 per cent of the State's non-metropolitan population. The quotients required to elect members varies greatly such that the voting power in the Mining and Pastoral Region is 3.8 times that of the North Metropolitan Region.

The Legislative Assembly has 57 members, 23 from the country and 34 from the city. The quota for city seats is nearly twice that for the country, the ratio being 1.88:1. However, the largest city electorate Wanneroo varies significantly from the smallest country electorate (Ashburton) to the tune of 3.33:1.

The arbitrary nature of the Metropolitan Zone is also illustrated by the contrast between Peel and Mandurah, with the former in and the latter out of the metropolitan zone. Peel has more than twice the electors of Mandurah (the ratio is 2.38:1). By what logic, one might ask, are the electors of Mandurah given over twice the voting power of those in Peel?

We have had the extraordinary situation in Western Australia where the Liberal and National Parties have always enjoyed a majority in the Legislative Council in the hundred years of responsible Government since 1890. Malapportionment has also impacted upon the ability of minority interests besides the Nationals to gain representation, even though there is now a system of proportional representation. The Royal Commissioners put it this way:

We acknowledge that proportional representation now provides one element in the electoral system for the Legislative Council. We consider, however, that the effect on it of the present regional division of the State strongly inhibits the possibility of significant minority interests obtaining representation in the House, representation which we believe should be promoted on democratic grounds.[21]

Imagine how our State's politics would operate if the current balance of power in the Senate applied in Western Australia's Upper House. Put simply neither Liberal or Labor Governments based on the Assembly would find an easy ride for their measures in the Council. There would be a real and an enduring check on the Executive. (See Appendices One and Two on votes and seats in the Senate and the Legislative Council.)

The fact that the State's electoral system has consistently skewed the political debate in the direction of conservative and rural interests has bred complacency within Coalition Governments and contempt within Labor Governments. It is difficult to assess what its broader impact has been on the State's economic and social development but that it has been significant, particularly in metropolitan Perth, is a conclusion that is hard to avoid.[22]

The fact that electoral equality has not been accepted by our State Legislature or State Supreme Court as a fundamental principle of representative democracy has opened up our political processes to manipulation and chicanery. It is a sorry tale for which, it would seem, intervention by the High Court is the only solution.[23]

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 22. One of the only attempts at analysing the relationship between regions and political culture in Western Australia to be found in Martyn Webb's innovative essay is "Western Australia: the Empire State", in P O'Brien and M. Webb (eds). *The Executive State: WA Inc and the Constitution* (Perth, 1991)
 23. In this paper I have not examined the possibility that the Commonwealth Parliament might legislate for electoral equality throughout the nation on the basis of the *International Covenant on Civil and Political Rights*. Article 25 reads:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs either directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of will of the elector (*emphasis added*).
- For the background see Nick O'Neill and Robin Handley, *Retreat from Injustice: Human Rights in Australian Law* (Federation Press, 1994), Ch 7: "International Protection of Human Rights".

APPENDIX 1

LEGISLATIVE COUNCIL ELECTIONS IN WA 1989 AND 1993

	1989		1993	
	Percentage MLC's Vote	Elected	Percentage MLC's Vote	Elected
Australian Labor Party	41.3	16	36.8	14
Liberal Party	41.05	15	45.6	15
National Party	5.00	3	3.8	3
Democrats	3.3	-	3.0	-
Greens	1.8	-	5.2	1
Others	7.4	-	5.4	1

APPENDIX 2

SENATE ELECTIONS IN WA 1987, 1990 AND 1993

	1987 *		1990		1993	
	% Vote	Senators Elected	% Vote	Senators Elected	% Vote	Senators Elected
Australian Labor Party	42.8	5	33.5	2	38.3	2
Liberal Party	39.1	5	43.3	3	48.4	3
National Party	5.5	-	2.9	-	1.7	-
Democrats Vallentine Peace Group	5.7	1	9.4	-	4.1	-
Greens	4.8	1	8.4	1	5.5	1
Others	1.9	-	2.4	-	2.0	-

* Double Dissolution

INDEPENDENT VOICES : THE TWO PARTY SYSTEM, WA INC AND ELECTORAL REFORM

**Dr Ian Alexander,
Department of Geography
University of Western Australia**
(Dr Alexander was State Member for Perth from 1987 to 1993,
and an Independent for the last two years of that period.)

HISTORY AND POLITICS

A cynic once said that the one thing we learn from history is that we DON'T learn from history! WA Inc is supposedly a period in our history from which we have learnt. These days even the ALP—under its new and supposedly squeaky-clean leadership— is saying that the approach was a mistake, and that it will never be repeated. And yet, perhaps the cynic was right, since apart from the ALP going into Opposition, and the Court Government occupying the Treasury benches, what has actually changed in the meantime to prevent a repeat of WA Inc?

In my view, and I believe in the view of an increasing number in the community, the two party/ Cabinet government system, combined with WA's peculiar electoral system, must shoulder a large part of the blame for WA Inc and its precedents. The Parliament is supposed to be a collection of elected members responsible to their constituencies. In fact it more often operates as a collection of party hacks doing their party's bidding. Hence under normal circumstances individual politicians have little effective scrutiny over Government.

In response to this type of criticism, Liberals are fond of telling the community that the conservative-dominated Legislative Council often acts as a check on 'mischievous' Labor governments. There are two major flaws in this argument :

1. Such a check , even if it were effective, only operates from one side of the party political fence ; are we really to believe that only ALP Governments need such scrutiny?
2. In any event, as we saw during the WA-Inc years, Parliament can be effectively by-passed by Cabinet through a variety of non-statutory devices.

EXECUTIVE DOMINANCE OVER PARLIAMENT

And so, whether there is an ALP or a conservative State Government, the dominance of the Executive over Parliament and the community remains despite a growing resistance from community groups and increasing challenge from Independents and so-called minor parties. As the Royal Commission said in 1992:

the causes of the decline in the effectiveness and reputation of the legislature are well understood. They lie chiefly in the dominance of the party machines in the work of elected representatives

After all, the much vaunted Commission on Government has only just been established, and it is not yet clear if it will be able to deal with an issue seen by the Royal Commission as critical : Parliamentary and Electoral Reform.

WA INC GIVES THE LIE TO THE ALP

But before I expand on that issue, a little on a more personal note. I resigned from the ALP to become an Independent in the WA Parliament in 1991 (following a torrent of other ordinary disillusioned members I might add) partly in protest at the WA Inc goings-on, and the inability of backbenchers to have their constituencies heard and keep Government to Party policy and ethical practices. I would like to take a few minutes to reflect on the political and business culture within which WA Inc was played out.

The scene is set neatly by the recent admission of Graham Richardson – key ALP Right figure with close links to the rich and powerful himself – that it is necessary to lie, and frequently if necessary, in order to maintain Party solidarity on the one hand and to achieve the next step in the power game, on the other. I seem to remember some remarkably similar admissions to the Royal Commission from former ALP Cabinet Ministers! Power and Government can only be maintained through a certain amount of secrecy in Government, and hence hiding of the truth, it is claimed.

As I see it, this philosophy of 'justified' lies and secrecy is little more than an excuse for the power-hungry. As one originally from the left of the ALP, and what was seen by many in the Party as the 'loony left', I actually believed that the ALP was in government to achieve reform not simply to stay in power. So in the early days of the now long gone Burke government, I was among the many party faithful in the ALP who hoped for great things in terms of social and economic reform.

But as one who also had an interest in city planning matters, and was on the Perth City Council at the time, it fairly soon became obvious that Labor's reforms –if they were to occur at all– would only come in the context of the now notorious Curtin Foundation, most of the members of which are now disgraced, dead, bankrupt or facing court charges. And ironically, so are many of the players who set up the Foundation in the hope of providing the ALP with a permanent pipeline to corporate funds.

As Paul Barry noted in his brilliant "Rise and Fall of Alan Bond" (page 141)

"looking at the incredible mess that Burke, Bond and another big businessman Laurie Connell have bequeathed WA, it is hard to believe that WA Inc once had a philosophy that both press and public believed in."

The public seemed to accept or were convinced by clever propaganda that a flirtation with business interests and the new entrepreneurs was necessary to oil the wheels of the economy. And the ALP membership, or the majority of it, were convinced that the relationship with business was necessary to keep the ALP Government in power.

At the time, of course, few realised just what a sleazy section of business entrepreneurs – the so-called four on the floor brigade– the Government had become associated with, and just how unethical both their practices became. The culture of greed which characterised the entrepreneurs intersected all too well with the culture of power maintenance and greed which infected much of the Burke Cabinet.

In the early and heady days of the Burke government few dissident voices were raised. But there was some dissent nonetheless and considerable grass-roots unease

in the ALP over the new partnership between the power-broking sections of the labor movement and the sleazier fractions of capital. In the local ALP branches, if we dared to express doubt as to the integrity of the Curtin Foundation philosophy --and we did-- we were either told by Party heavies that we were malcontents or if they were in a more charitable mood, we were told "don't worry, we will keep the members of the Foundation at arm's length!". It soon became obvious that this was a difficult if not impossible task.

Indeed the Government seemed to set in place a corporate arrangement around the WADC which assured the arms were very short indeed --so short in fact that everyone in the Curtin Foundation club (the major financial donors) not only had access to the Premier, but to some of the best and most exclusive deals in town. Nowhere was this more obvious than in the city centre : tender processes were rorted for the Casino, for purchase of the former Perth Tech site and so on. And in each case the beneficiaries were part of the magic circle : Dempster, Bond, Connell, Horgan etc.

So that was the first lie, but somehow the Government retained its credibility in Brian Burke's days as Premier. Perhaps the ALP hierarchy of the day were as good at lying as was Richardson?

There were many other lies and deceptions on the public to follow. And regrettably, the ALP Caucus of which I was a member for four years, allowed the process to continue. Partly through ignorance, partly through fear.

HEAR NO EVIL, SPEAK NO EVIL....

I will draw on just a couple on instances to illustrate the 'culture' which prevailed in Caucus at the time. (1987-89):

1. Efforts to raise Caucus alarm at the growing problems of WA Inc following the Rothwells Rescue were greeted with scepticism : many members were worried but didn't know what to do.. they know the ALP Government seemed to be increasingly beholden to big business, but there was a certain blindness to the idea of trying to initiate change. When I or others on the dissident left raised concerns we were usually urged to leave well alone. At a Caucus seminar on one occasion in 1988, one senior Cabinet Minister, who must have known better, even tried to convince us that WA Inc was "socialism in action"! If you believed that, you would believe anything!
2. Following the collapse of Rothwells and the setting up of the petro-chemical deal in the lead up to the 1989 election, the Caucus was simply told --as was a still-gullible public-- that the government had swapped its potential debt to Rothwells for equity in the petro-chemical proposal.

Most Caucus members seemed to believe this, or want to : for we were also told that we shouldn't know too much : ignorance is bliss as they say! There was plenty else we didn't know at the time too : Dowding had assured all in 1988 that WA Inc was dead, and yet it turned out from Royal Commission evidence that the donations from Curtin Foundation members were still coming in thick and fast throughout that year : nearly \$1 million from the Bond Corporation alone.

But regardless of such matters the Caucus was also told that the PICL deal was essential to Labor's survival at the 1989 election! In other words, the cover-up had already started, and it was essential to maintain it in order for Labor to get re-elected. Since many members were in marginal seats, most chose to heed this advice and concentrate on re-election, rather than asking too many probing -- and potentially electorally damaging --questions. Here then is the fear element. We were also told in no uncertain terms that if we spoke out too much, we would be pushed out of the SPLP in any case.

The fact that the petro-chemical plant was more of a fiction than fact, and that the main beneficiaries of the deal seemed to be the likes of Bond and Dempster, then was conveniently ignored by Caucus members in their anxiety to get the political benefits of the 'deal' i.e. re-election in 1989.

Mind you, it should also be remembered that even if the Caucus had expressed more concern at the deal, the fact is it had already been done by the Cabinet --or a small clique within Cabinet-- and there was little Caucus, or the Parliament could do to change that. As I suggested earlier, the WA Inc years turned by-passing of Parliament into something of an art form.

Nonetheless, as I see it six years on, Caucus missed a golden opportunity to bring some pressure on the Government from WITHIN. For in our hearts, many knew something was rotten in the State of WA!

A GREENER FUTURE?

And so it proved. The rest is history, and I want now to turn to some possible remedies. This as an ex-Independent MP, now a member of the Greens (WA), a party dedicated to participatory democracy and social justice as well as to more well-known environmental goals.

1. Parliamentary Reform seems to be mandatory. It is clear that under present electoral and Parliamentary arrangements the Cabinet and Executive of the day can either dominate both Houses of Parliament (as under the current Government) or can bypass a potentially hostile Parliament (as did the Burke Dowding and even Lawrence governments).
2. The Cabinet should therefore be far more accountable to Parliament. From my brief time as an Independent in the Legislative Assembly, I can observe that the Government was distinctly more nervous and careful about its legislative programme when it was faced with potential defeat on the floor.
3. And yet, many decisions in Budgetary terms were --and still are-- made outside of Parliamentary scrutiny (eg continuing deals made by the SSB, SGIC, controversial public works such as those often proposed by the MRD etc). It should not be possible to undertake major reorganisation of Government or semi-government finance, such as a Rothwells rescue or a petro-chemical deal involving Government and statutory corporation funds, without much closer Parliamentary scrutiny, including its prior approval.
4. This means that the Constitution should be changed such that major financial decisions, including all major capital items allocated under the Budget AND by statutory and semi-government authorities are subject to Parliamentary debate and approval.
5. In electoral terms, this means --as partially suggested by the Royal Commission-- adoption of a system of proportional representation and multi-member electorates in both houses. This would lead to a Parliament more representative of the plurality of views in the community-- instead of the present situation which sees the vast bulk of seats in the hands of the major parties, with only a few other voices present.

Even with such reforms, the State Government of the day will still be subject to strong pressures by local and international capital to deliver the goods in terms of favourable deals. But if we are to go any way towards greater democratic control over our State affairs these steps must be taken urgently. It is time to put the Royal Commission agenda back in the urgent basket.

In my view this is the only way to give people a greater degree of confidence in their MP's, who currently rate in the community at the very bottom in the unpopularity stakes. Given the excesses of the 1980s, and the failure to date of the Court government to implement any genuine reforms, this is with good reason.

THE ELECTRONIC WHITE BOARD I: ELECTRONIC RECORDKEEPING PRACTICES IN W.A. PUBLIC SECTOR AGENCIES:

Report on Work in Progress (as of December, 1994)

Ms Vicky Wilson

Department of Library and Information Science
Edith Cowan University

[During 1994, the Department of Library and Information Science at Edith Cowan University received a grant to investigate electronic recordkeeping practices in Western Australian public sector agencies. The Electronic Recordkeeping Research Group was established in July, 1994. The following is a report on progress to date.]

The Electronic Recordkeeping Research Group started its investigations from the premise that there is a need to build in greater levels of accountability into electronic recordkeeping systems. The events of the 1980s in Western Australia and the conclusions of the Royal Commission into the Business Dealings of the WA Government and others have focussed attention on the importance of accurate and complete records to ensure responsible and accountable government.

The Management Information Systems (MIS) that have been developed to meet the information management needs of the business community provide efficient support for business activity, but they do not address the evidentiary nature of records or the need for accountability, particularly in public sector agencies. To meet the needs of the organisation for efficient and timely information, MIS are specifically designed to provide data that is non-redundant, timely and reusable. Officers in the organisation need to be able to access and manipulate that data and create new records to support their business activities.

In contrast, an electronic information system which has been specifically designed to preserve records for the purposes of evidence and accountability does exactly the opposite. In order to preserve evidence of past transactions, the records in such an evidentiary system need to be redundant and non-reusable. They must accurately reflect the business transactions of the organisation, the lines of responsibility and the continuity of events over time. By their very nature, they cannot be changed or manipulated, as this would immediately destroy their veracity as evidence.

The dilemma for records managers is the marriage of these two disparate elements. Electronic information systems must continue to be constantly available and accessible to the organisation. The information within those systems must continue to be modifiable, manageable and retrievable at all times. At the same time, the same systems should create accurate, secure and responsible records of business transactions. This marriage must be achieved with the least possible disruption to

the business of the organisation and in such a way that the burden of professional accountability for individual officers does not become too great.

It was the opinion of the researchers that while the functional requirements for MIS are well established and the constant object of revision and discussion, little thought has been given to the functional requirements for accountability and recordkeeping. The development of such electronic 'recordkeeping systems' was technically quite feasible, but it was debatable whether the organisational culture of the WA public sector would support the necessary changes to policy and practice that would be required to implement such functionality.

The research group therefore developed the following hypothesis to test against WA public sector agencies:

Western Australian public sector agencies that address accountability issues related to electronic recordkeeping have appropriate policies, practices, processes and philosophies in place.

In order to test these hypothesis, we needed to gather data from all WA public sector agencies likely to have significant electronic information systems in place. We were aware that agencies were in very different stages of development with regard to electronic information systems, so for the first phase of the project, a questionnaire was designed that would identify those agencies with complex and distributed information systems. The questionnaire is being distributed at the present time. It attempts to elicit information on the organisational structure, the IT budget, the hardware, software and networks in use, the information processing environment and any policies and procedures for the integrity and security of the electronically stored records.

We are also asking some preliminary questions to ascertain the level of awareness within the organisation on matters of data management and accountability, through questions about their data management principles, backup policies, data exchange policies, retention and disposition policies. These responses will help us formulate the questions for the second phase of the study, where we will work with selected agencies to establish policies, procedures and practices to manage their electronic data, according to the following principles developed by Robert Smith-Roberts and the Australian Archives (Smith-Roberts, 1993):

- Know your data
- Share your data
- Maintain your data's accuracy and
- Preserve your valuable data.

The third phase of the project is to work with one agency in a collaborative project to actually establish and integrate requirements for accountability into their existing systems, with the goal of establishing a set of policies and guidelines that can then be used by other agencies to implement similar cultural and technological changes within their own agencies.

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If you would like further information about this project, please contact:

Vicky Wilson
Project Manager
Electronic Recordkeeping Research Group
Department of Library and Information Science
Edith Cowan University
2 Bradford Street
Mt. Lawley
WA 6050

Tel: (09) 370 6208
Fax: (09) 370 2910
email: v.wilson@cowan.edu.au

THE ELECTRONIC WHITE BOARD II: THE COMMISSION'S PERSPECTIVE ON PUBLIC RECORDKEEPING AND THE INFORMATION AGE

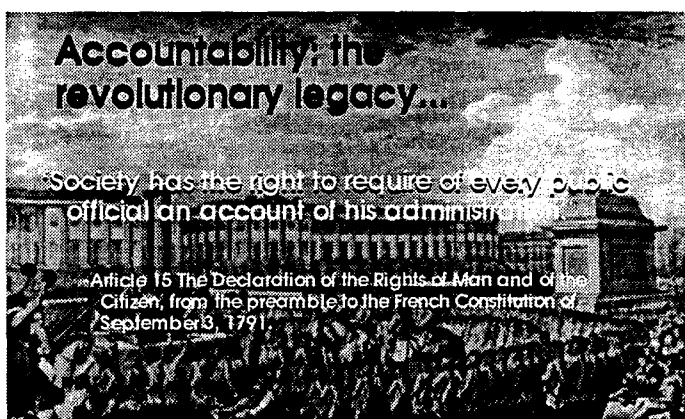
Mark Brogan,
Department of Library and Information Science
Edith Cowan University

The modern idea of public recordkeeping as the servant of the people, and not merely of the Crown, can be traced to the French Revolution of 1789. Before the revolution, the absolutist monarchies of Europe regarded themselves as answerable only to God, and hence the rights of citizens to access public records, or to use them for ensuring the accountability of government to society, were not recognized.

The Revolution changed all that. In 1794, the Revolutionaries enacted legislation¹ which established

- an obligation on the part of the State to preserve the documentary heritage of the past contained in public records;
- the right of citizen access to public records by virtue of a legal prescription.

For the first time since the period of medieval city states, the preservation of records was seen in the context of the relationship, rights and duties between citizens and states, in which states had to preserve records because of their destination for public use and because of the government's duty of accountability. Expressed in many



more complex ways in the Westminster system since, the modern idea of accountability can be seen in Article 15 of the Declaration of the Rights of Man and of the Citizen, the idea that:-

In the nineteenth century, interest in public recordkeeping declined. A variety of factors were at work here:-

- the nineteenth century involved an explicit renunciation of many of the revolutionary ideals;
- the influence of romanticism in society emphasised the heroic, as opposed to the pedestrian; and
- recordkeeping itself lost its mystique as a result of increasing literacy and improvements in office technology.

Such interest as there was, reflected the perceived importance of non-current public records as historical source materials for the writing of histories- a purpose commensurate with the neo-classical revival and the influence of romanticism.

For the first half of the twentieth century, social upheaval occasioned by war and the ideological divide between capitalism and communism, effectively placed the issue of government's relationship with citizens on the back burner. Citizens were obliged to trust their government, in the interests of unity before the common foe. This situation changed in the late 1960's, as the cold war receded in intensity, and attention focused on the 'democratic' character of the modern liberal democracy, something previously not questioned. Critical in this were:-

- the repressive response of the State to popular opposition to the Vietnam War;
- awareness of the extent of deceit (something we popularly call 'dis-information') practised by the modern state in the normal conduct of its business (revealed dramatically by the leaking of the Pentagon papers by Daniel Ellsberg in 1969; and
- popular awareness of writers such as George Orwell and Chomsky, who exposed the character of the modern totalitarian state, and its power base in creation and access to information.

The grass roots democratic movements which first came to prominence in the late 1960's, had a number of discrete information policy goals:-

1. making government accountable to citizens for the management of private information it creates (a concern founded in the introduction of computer based information systems which increased the potential for privacy abuse), and
2. the introduction of citizen rights of access to government information.



The idea that government can and should be made accountable for the information that it keeps was dramatically demonstrated in 1974, when Richard Millhouse Nixon resigned the US Presidency, following discovery of White House tape

recordings which implicated him in the infamous Watergate break in during the 1972 Presidential election campaign.

The message from Watergate, that Executive power had the potential to undermine democracy, was at least temporarily, absorbed- In the United States and other liberal democracies, legislatures re-asserted their power. However, the medium of the message, public recordkeeping, was mostly ignored. The reform agenda in information policy continued to focus on information access and privacy issues. In effect, the issue of popular sovereignty over the information created by Government, as a consequence of the activity of public recordkeeping, was only partly addressed.

The debate about sovereignty over public records did not begin with the Nixon affair, but is about as old as government itself. In political philosophy, we can conceptualise the two positions in terms of the two very different understandings of sovereignty derived by the philosophers' Locke and Rousseau.

For Locke, sovereignty was transferred to rulers from the people as a result of a social contract. While it could be reclaimed by the people, government was empowered to go about its business unless it betrayed the trust on which the contract was based. For Rousseau however, who agreed with Locke's idea of a social contract, the idea of sovereignty being transferred to government was repugnant. For him, sovereignty not only originated with the people, but stayed with them, an idea linked to the obligation of government to carry out the common will.

These two competing perspectives can be seen at play, when we ask ourselves the apparently trivial question, who owns government records?

In Australia, privacy protection and citizen access to government information, have formed the subject of a grab bag of reforms collectively known as the new administrative law. In most States and Federally, Australian citizens now have an enforceable right of access (subject to exemption) to government information through Freedom of Information, and some degree of privacy protection through various Privacy Acts.

The 1980's was a period of considerable activity in administrative law. The Commonwealth Government was the first to legislate for citizen right of access with its FOI Act (1982). Under Commonwealth law, complementary rights of access are provided to current, semi-current and non-current records. Under the Freedom of Information Act, right of access (subject to exemption) is provided to current and semi-current records. Archival access (also subject to exemption) is available to non-current records more than 30 years old. The Archives Act (1983) is a comparatively little known and under-utilised information access resource which can be used to surprisingly good effect- e.g. has been used to secure access to the non-current records of ASIO. The Western Australian Government enacted FOI legislation in 1992, and this legislation is about to have its first anniversary of operation.

The first specific information privacy legislation in Australia, was Queensland's Invasion of Privacy Act (1971), later amended by the Invasion of Privacy Act Amendment Act (1976). These acts dealt with the licensing and control of credit reporting agents, detective agencies and regulation of the use of listening devices. The first Australian law to deal with the issue of data privacy, was the Privacy Committee Act, enacted by the New South Wales Government in 1975. In 1976, the Australian Government referred the matter of privacy protection in law to the Australian Law Reform Commission for report. In 1983, the Commission presented a two volume report on privacy in Australia, which recommended the enactment of privacy protection law covering the Federal public sector. The report was accompanied (Butler, 1992, p.17) by draft legislation incorporating data privacy principles based on the O.E.C.D.'s Guidelines on the Protection of Privacy and Transnational Flows of Personal Data (1980).

Since 1983, privacy protection in Australia has been the subject of a flurry of legislative activity, the most notable examples of which have been The Privacy Committee Act (1984)(Queensland), Privacy Act (1988)(Commonwealth), Privacy Bill (1990)(South Australia) and Privacy Act Amendment Act (1990)(Commonwealth). In 1984, the Australian Government moved to formally adopt the O.E.C.D. principles.

However, in most Australian jurisdictions, these reforms effectively overlooked the life cycle management of public records from creation, through maintenance to final disposition. In Western Australia, regulation of public recordkeeping continued to be based on the anachronistic provisions of the Libraries Act- An Act created essentially for another purpose, and in which the public interest in public recordkeeping, was conceived in nineteenth century terms i.e. when they had ceased to be used for business purposes, public records might be used for historical research.

Failures in the existing regulatory regime, coupled with cultural factors such as the new managerialism and entrepreneurial ethos, provide the causal explanation for many of the 'improper' document management practices identified with WA Inc. The Royal Commission described a picture of dysfunctional recordkeeping in which functional requirements for capturing, maintaining and accessing records with evidential value were not satisfied. It described practices at the highest level of Government aimed at manipulating the evidence contained in documents to escape accountability. The Commission highlighted problems in:-

Capture

Some decision making at the highest level of government, was not captured as recorded information. Consequently, government contractual obligations and the reasons for government decisions were often difficult to establish. The Royal Commission Part I Report detailed how in cases such as the Burswood Casino, purchase of the Fremantle Gas Co by SECWA, and Kwinana Petrochemical project, the failure to capture important decision making as recorded information placed the finances of the State in jeopardy.

Shredding

Multiple instances of shredding of files and documents, forming public records, apparently intended to obscure executive action and decision making.

Corruption

If public records are to have value as evidence of executive action, they must be authentic. If they are to be maintained as part of normal business practice, then the record of changes made to them must be auditable. Encompasses a variety of actions involving the replacing of original copy with edited or substitute, changed copy.

Accessibility

If public records are to have value as evidence of executive action, then they must be accessible, and arrangements for their custody must ensure their security. The Commission identified instances where records had been removed from Ministerial Offices and where the status of such records as public records had not been recognized. The misfiling of information can also be an effective way of obscuring the record of business transaction or decision making. The same effect can be achieved by destroying control records which identify the physical location of records.

In its assessment of the relationship between recordkeeping and responsible government, the Commission was influenced by a view of public records as evidence, meaning :-

- evidence in a legal sense, as proof of an event...

- evidence of government action and decision making enabling citizens to make informed decisions about the performance of government

The Commission concluded (RC Part II s.4.3.1) that where official papers are lost, deliberately destroyed or removed by officials, and where a record of decisions is not made

Such practices strike at the roots of responsible government. Whether intended or not, the result is a false or incomplete account of the stewardship of the Government. Proper record keeping and effective record security are essential to good public administration. Proper recordkeeping serves two purposes. First, it is a prerequisite to effective accountability..

In its Part Two Report, the Commission made recommendations concerning public recordkeeping, which it believed were necessary to ensure evidence and hence accountability.

It is a matter of history that these changes have to date not been acted upon.

While the Commission was primarily concerned with discovery of evidence in paper (the 'paper trail'), the classic bureaucratic image of files and paper may be said to no longer accurately depict the reality of government information systems. What we recognize as paper, is increasingly a representation of data contained in a computer based information system at a particular time.

A recent report commissioned by the US Congress² concluded that by the year 2000, 75% of all US Government business will originate in electronic form. As we make the transition to a digital society, an important question for society is whether digital technologies are likely to increase or diminish the accountability problem in government. Are digital technologies in communications and information systems accountability benign?

Three characteristics in data management under score the advantages of computer based information systems for business applications, compared with paper based recordkeeping systems:-

Data in computer based information systems is intended to be

1. non-redundant
2. timely, and
3. reusable

The non-redundancy of data means that systems carry no overheads of obsolete data (paper based systems normally carry significant overheads of non-current information). The timely nature of data means that data accurately depicts the business situation at any instant. Information is by its very nature current (allowing for batch or on-line data update modes of operation). Information in paper based systems on the other hand, is often non-current and paper based systems often do not reflect the real time situation of business. The re-usability of data means that data currency can be efficiently maintained through editing and updating of existing data, an idea logically related to the previous two.

However, an electronic (or any other) recordkeeping system is intended to preserve evidence i.e. information about the content, structure and context of a transaction. As such, the data management characteristics of a recordkeeping system are the very opposite of a computer based information system. Data is intended to be

1. redundant
2. time bound, and
3. non reusable

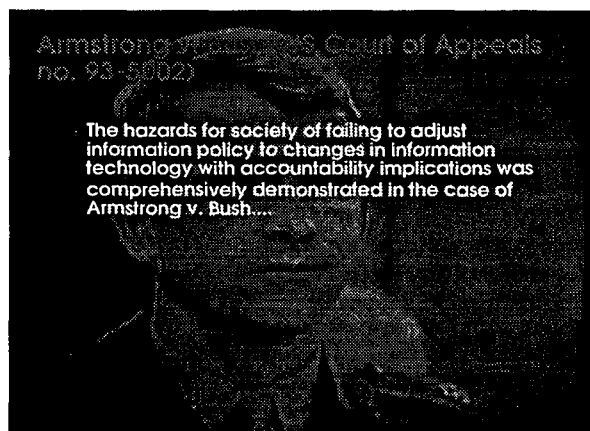
This is not an invitation for us to throw up our hands in despair about the apparent incompatibility of new technologies with evidence, and hence accountability. David Bearman at the University of Pittsburgh³ has suggested that electronic information systems can fulfil the functional requirements of recordkeeping systems through the tactics of:-

- systems design
- systems implementation
- policy frameworks, and
- standards frameworks.

What is essential, is for government to adjust systems design, procurement and electronic records management policies and procedures to ensure evidence. However, to date, Government in common with other consumers of information technology, has shown little appreciation of the long run life cycle data management view of information systems, compared with the short run, business efficiency view. As a consequence, few systems meet the functional requirements for recordkeeping exposing society to accountability related risk.

The Case of Armstrong v. Bush

In 1987, the United States Congress and Senate conducted joint hearings into allegations that the United States Government had covertly and illegally sold arms to Iran and subsequently used funds derived from these sales to fund insurgency operations by Nicaraguan rebels (known as Contras) against the Nicaraguan Government. During the context of these hearings, it was revealed that Colonel



Oliver North, the National Security Council officer who had engineered the so called Iran-Contra deals, had received electronic mail from National Security Advisor John Poindexter congratulating him on providing false testimony to the Congressional inquiry. This and other revelations focussed attention on the relevance to investigations of information contained in the White House PROFS, OASIS AND A-1 electronic communications systems.

In 1989, the Public Citizen Litigation Group filed suit against the Executive Office of President alleging that electronic records contained in the above systems could only be disposed of and dealt with in accordance with the Presidential Records and Federal Records Act. This action had been prompted by a Bush Administration decision to destroy the back-up tapes at the heart of the controversy. In January 1993, Judge Ritchie of the U.S. District Court of Columbia⁴, delivered a judgement in the case of Armstrong v. Bush with far reaching implications for all Governments in their treatment of electronic records issues. Ritchie ruled that the electronic records at the heart of the controversy comprised federal records within the meaning of the Federal Records Act, and should be extended statutory protection. On the 13 August, 1993, this decision was upheld by a Federal Appeal Court Judge.

Significance

Armstrong v. Bush demonstrated the extent to which systems design, regulatory and electronic records management issues have significant implications for Executive accountability. While the immediate impact of the case has been limited to the United States, it has demonstrated the need for all governments which make significant use of digital information and communications technologies and which profess a genuine, rather than just rhetorical interest in accountability, to adjust policy and procedure. Specifically, we can conclude that in the absence of initiatives aimed at ensuring evidence, the prognosis for government, including the Government of Western Australia, is for an increase in accountability related risk arising from increasing use of digital technologies.

Conclusion

The Royal Commission demonstrated the extent to which public sector records management has significant implications for government accountability. However, the Commission was only incidentally concerned with issues in accountability arising from public sector records management, and analysis of the likely impact of digital communications and information technologies, suggests that problems surrounding the record of government action and decision making are likely to grow. The reform agenda established by the Commission in its Part Two Report, does not in itself constitute a response to the problems of the 'electronic white board', but through the regulatory powers and new public records legislation envisaged in the Report, an appropriately constituted Public Records Office might play an important role in addressing this issue.

However, since the Royal Commission, there has been no change in public records legislation. A *Discussion Paper on New Public Records Legislation For Western Australia* circulated by LISWA in 1994 recommends a number of worthwhile reforms, but entrusts scrutiny of public sector recordkeeping to a proposed Public Records Commission, which does not include information technology representation. Overall, progress is proceeding at a snail's pace, posing a dilemma for society as government recordkeeping becomes increasingly digital..

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¹vide Posner, Ernest (1940). Some Aspects of Archival Development since the French Revolution. In *American Archivist*, 3(3), July, 1940. The legislation reference is 7 Messidor Ann 2.

²United States Congress. House Committee on Government Operations. (1990) *Taking a Byte Out of History: The Archival Preservation of Federal Computer Records*. Washington. United States Government Printing Office.

³Bearman, David. (1993) Recordkeeping systems. In *Archivaria* no.36 (Autumn 1993) pp.16-35

⁴*United States District Court For the District of Columbia: Scott Armstrong, et al., v. Executive Office of the President, et al.* Civil Action No. 89-142 (CRR)

TURNING ON THE SEARCHLIGHT: A RETROSPECTIVE ON THE FIRST YEAR OF OPERATION OF THE FREEDOM OF INFORMATION ACT 1992

Karen Anderson

Department of Library and Information Science
Edith Cowan University

The Freedom of Information Act 1992 clearly states two objectives. They are to:

- enable the public to participate more effectively in governing the State; and
- make the persons and bodies that are responsible for State and local government more accountable to the public.

Given these objectives, the intent of the Act must be construed as facilitating openness in the process of decision-making and allowing scrutiny of decisions and actions by government agencies, except under the range of exemptions for particular agencies and particular types of records.

The Introduction to the Act goes on to say that these objectives are to be achieved by:

- creating a general right of access to State and local government documents;
- providing means to ensure that personal information held by State and local governments is accurate, complete, up to date and not misleading; and
- requiring that certain documents concerning State and local government operations be made public.

A large proportion (75%) of requests under the Act have been for personal information and in a society which values freedom and democracy it is important that individuals should have access to information held about them and the ability to ensure that such information is accurate, giving the right to have records amended if they are incorrect.

Non-personal requests

However, the requests typified as "non-personal" in the *Freedom of Information Annual Report 1993-1994* are of considerable interest when attempting to gauge the openness or otherwise of government decision-making, and the first and third of the Objects of the Act are probably the most relevant to these types of requests:

- creating a general right of access to State and local government documents; and
- requiring that certain documents concerning State and local government operations be made public.

The *Freedom of Information Annual Report 1993-1994* provides little comment on non-personal requests other than to offer a list of the 13 agencies receiving the highest

numbers of this type of request. The Police head the list with 161 requests. The Health Dept follows with 43, then the Department of Premier & Cabinet with 20. The remaining 10 agencies listed have between 9 & 12 requests each.

Publication of information

The remaining objective is also very important:

- requiring that certain documents concerning State and Local Government operations be made public

While this is probably the hardest objective to measure, its success if achieved, will do much to achieve real open government. That is, if government agencies establish a culture in which the public is more actively encouraged to participate in decision making and as much information as possible is freely published or provided for inspection upon demand without prejudicing privacy or the public interest, then much progress will have been made towards open government.

In the early stages, it will be possible to measure progress toward publication by agencies of the information statements and internal manuals required by the Act.

But measurement of the step beyond this, the willingness to release information not actually required to be released by the Act, is difficult. Much informative material, of course, is already published. However, quantity of publications is not a significant measurement tool: quality of information made available becomes an issue. The length of lists of publications can be misleading. Governments can easily pad publication lists with trivia and advertising material which seek to present decisions in the best possible light without soliciting participation in or comment on the decision-making process. Counting the number of publications won't tell us much about the openness of a government.

Whether or not it can be accurately measured, it is a willingness to share the decision-making process and to freely provide information to all, rather than leaving it to interested individuals to winkle it out through use of FOI legislation, which will indicate real openness of government.

Yet the most important step which can be taken to support the Freedom of Information legislation is yet to be recognised by the Government and that is support for records management programmes in government agencies.

Information for the people

To gain a different perspective on the general right of access to State and local government documents I approached *The West Australian* for an overview of their experience in using the Freedom Of Information Act for access to information which they believed to be "in the public interest". I am very grateful to the Editor, Mr Paul Murray for permission to look at their experience, and to Liz Tickner in particular for her generous help.

In outlining *The West Australian's* experience I do not intend to imply that it or any other news publication is an arbiter of the public interest. The newspaper was chosen as an example of a frequent user of the Act for non-personal information. Indeed, Commissioner Keighly-Gerardy in her Decision 0194 makes the following statement on the concept of "the public interest".

The Public Interest - Clause 8

55. The public interest is not defined in the WA Act, nor in any other similar legislation. It is allied to the concept of public interest immunity or crown privilege, considered by courts in determining whether official documents of government could be produced in court. In Freedom of Information legislation, the public interest test is used to balance competing interests.

Whilst the public has an interest in access to information, the public also has an interest in the proper functioning of government agencies and in protecting the privacy of individuals and the commercial interests of business organizations.

56. In applying the public interest test, the difference between matters of general interest and those of private concern only, must be recognized. The public interest is an interest that extends beyond what the public may be interested in today or tomorrow depending on what is newsworthy.

The experience of The West Australian

The West Australian lodged a number of Freedom Of Information requests on 1st November, 1993: the first day that the Act came into operation. These requests all concerned topics for which they had previously been unable to gain access to the information they sought.

Although no statistical record has been kept, very few have been completely successful. The newspaper has adopted a policy of reporting the Information Commissioner's decisions on all requests which have gone to external review, as well as reporting the success or failure of their own FOI requests. They believe that on the whole they have obtained more information through documents which have been leaked to them after reporting that FOI access on a particular topic has been denied, than through the process of FOI. These information windfalls have resulted in a number of major stories for *The West Australian* and perhaps most importantly reveal that there is a strong desire for information to be available to the community. It also points to a very real need for protection for "whistleblowers" which the Royal Commission recommended.

"Unsuccessful" FOI requests

The earliest of these stories concerned the Potato Marketing Board. *The West Australian* lodged a request for access to copies of Board meeting minutes; consultants reports on the management of the authority; details surrounding the resignations or termination of employment of four staff members; information concerning black marketing activities and pecuniary interests. Access to very little was granted, but the documents that had been sought were subsequently leaked within 48 hours of the newspaper reporting their lack of success. This resulted in major stories published on 17th and 18th January, 1994.

A notable failure for another organisation was a request lodged by the Opposition with the Department of Premier and Cabinet for the working papers and consultant's reports to the McCarrey Commission. *The West Australian* had also considered lodging a request for this information, but chose to wait for the result of the Opposition's request.

Of 79 documents requested, 77 were refused. In an 85 page response, the Ministry of Premier and Cabinet effectively said 'no' to the Opposition's request - and charged \$90 for dealing with the application! Mr Ian Taylor's media release pointed out that although the McCarrey Commission had cost taxpayers \$500,000 its workings were denied to them and kept secret.

Another event which was the subject of considerable interest in the community was the Sinatra's affair. Constable Salt's trial was told he had been drinking at Sinatra's Tavern for at least four hours before before an accident in a police vehicle but he could not be breath-tested after the accident because he and three other detectives left the scene. He was subsequently acquitted on a drink-driving charge because of lack of evidence.

The following is quoted from the article of 16th July illustrated below:

"The West Australian submitted questions to the Police under the Freedom of Information Act but the force has failed to meet the 45-day statutory deadline imposed by the Act. The deadline was May 2. Under the Act, the failure of the police to meet the deadline constitutes a legal refusal to release the information."

The article also reported:

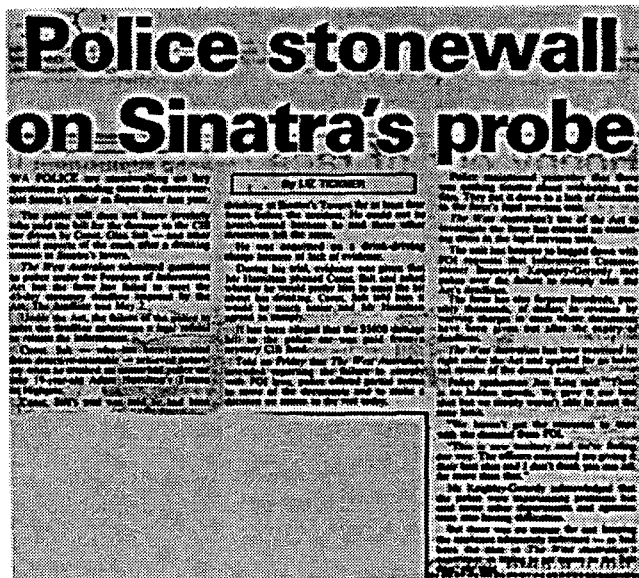
"Told on Friday that The West Australian intended reporting the failure to comply with FOI laws, police offered partial access to some of the documents and to make a decision on access to the rest today. Police maintained yesterday that there was nothing sinister about withholding the files. They put it down to a lack of resources in the force's legal services unit."

The West Australian's use of the Act to investigate the force has exposed an escalating crisis in the legal services unit. The unit has become so bogged down with FOI requests that Information Commissioner Bronwyn Keighley-Gerardy met police over the failure to comply with the Act's deadlines.

The force has also forgone hundreds, possibly thousands of dollars in revenue by waiving charges in cases where documents have been given out after the expiry of deadlines.

The West Australian has now exercised its right under the Act and applied for an internal review of the deemed refusal. Police spokesman Jim King said: "There is no hidden agenda. We gave it our best shot but we simply weren't able to meet the time limit. We haven't got the resources to cope with the demand from FOI. This is new territory and we're feeling our way. The officers concerned are giving it their best shot and I don't think you can ask for more than that."

Ms Keighley-Gerardy acknowledged that the police were experiencing problems but said some other departments



and agencies were also having difficulties. But there was no excuse for not keeping the applicant adequately informed- as had been the case in

The West Australian's experience in trying to get access to the Salt files, she said.

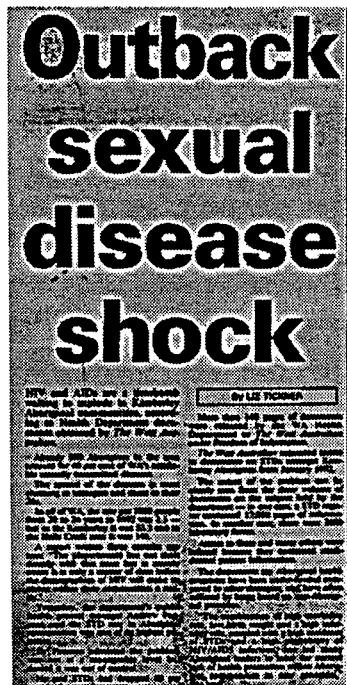
Access to requested information achieved

Balanced against those examples are the newspaper's successful FOI requests. Most notable was a request to the Health Department for information about the incidence of sexually transmitted diseases among Kimberley Aborigines. Although this was a particularly difficult request to handle on a topic which is a very large problem for the Department, their response was exemplary.

More than 140 pages of documents were released by the WA Health Department to *The West Australian* in response to their Freedom of Information request. *The West Australian* requested access to documents on sexually transmitted diseases amongst Kimberley Aborigines from January 1992.

The extent of the problem can be clearly seen from the sheer volume of documents on the subject held by the department—in one case, a sexually transmitted diseases register contained 17,000 pages of information. In another case, there were 2000 laboratory forms. Access to these and many other documents were of course refused because they contained confidential patient information. The released documents say Aboriginal health problems have been under-funded compared to other strategies, and have often suffered by being based on non-Aboriginal priorities.

The West Australian ran front page stories followed by a series of double page spreads entitled "Outback Health" raising public awareness of a serious health problem. The article below was published on Thursday, 3rd February, 1994.



In another series of reports which commenced on 9th June, 1993 Liz Tickner reported in a page 3 story that the Rural Adjustment and Finance Corporation had come under pressure to provide assistance to three farmers in serious financial trouble. In response to an investigation by *The West Australian*, RAFCOR chairman John Groves said that Mr House's request amounted to the corporation being asked to "act above and beyond the call of duty."

On 16th June it was reported that Mr Groves had apologised to Mr House, and on the following day that Mr Groves had resigned his position as joint chairman and chief executive. The report noted that attention would now focus on changes Mr

House could make to the corporation, including splitting the roles of chairman and chief executive, in line with coalition policy statements made prior to the State election.

On 26th January, 1994 a NEWS EXTRA reported that *The West Australian* had obtained documents through Freedom of Information which justified Mr Groves' comments reported on 9th June.



Raising standards of records management

At present agencies are given no extra resources to deal with their responsibilities under the Freedom Of Information Act, or with the number of information requests, which will grow as the public becomes more aware of their rights under the Act.

Many requests have caused agencies a great deal of very time-consuming work which simply has to be added on to existing workloads. After a number of years of action in the Public Service aimed at reducing staff and increasing productivity it must be realised that new functions of such significance as the provision of Freedom of Information cannot and should not be dealt with simply by tacking it on to the end of someone's job description. The failure of the Police to respond in time to the Sinatra's affair request is indicative of these difficulties, although it is also an illustration of a culture of secrecy which must be overcome both in pockets of the public service and among elected members of Parliament. David Parker's reported comment that governments operate on a principle of concealment offers an indication that this culture exists at executive level.

The problems encountered can only be addressed by paying more attention to records management in government agencies. The corporate memory is the most valuable asset any agency holds, yet few acknowledge this in their management practices. A number of agencies have had to cast their search net over various offices and branches, as they are not certain where records relevant to a particular request may be held. Urgent action is also required to ensure that agencies understand the management implications of records held in electronic format and have in place the policies and resources to deal with them.

Support for greater access to information requires:

- resources to improve records management in government agencies which will in turn
- support agencies' ability to respond to FOI requests.

This can be achieved by:

- employing professional records managers in government agencies; and
- increasing the resources of the Records Management Office of the State Archives, enabling the Office to increase its work towards raising the standard of records management in government agencies through advisory services and training programmes.

Professional standards of recordkeeping and accountability go hand in hand and the employment of professionally educated records managers is essential if agencies are to emerge from the paperchase (or the even more nightmarish electronic record chase) that many are currently experiencing.

A professional records manager will:

- have a professional understanding of the legal, ethical and social obligations of the organisation and a broad understanding of the constraints of the social environment;
- develop policies and devise systems which ensure that the standards of recordkeeping within the organisation are capable of meeting those obligations. This will include advising on the design of electronic recordkeeping systems to capture 'complete accurate reliable and useable records'. (McKemmish, 1994)
- develop policies standards and strategies in conjunction with other information professionals in the organisation to deliver services in the most efficient and cost-effective manner;
- provide custodial services such as indexing and scheduling of corporate records regardless of their physical location or format. (Wilson, 1994);
- provide advice, assistance and training to action officers and support staff in the organisation to ensure that standards are met. (Wilson, 1994)

Furthermore, a staff of only two in the Records Management Office of the State Archives cannot hope to provide or even coordinate all of the extensive training and advice on records management currently needed across Western Australian government agencies, although excellent efforts are being made by that Office.

The emphasis placed on education and mediation between requestors and agencies by the Office of the Information Commissioner when reviews are requested, and its concern for education and awareness concerning rights and obligations under the Act is an exemplary start to its activities. However, if the Freedom of Information Act is to operate to its full potential in contributing to openness of government in Western Australia much more attention must be paid to raising the standards of records management in government agencies.

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REFORMING THE ADMINISTRATIVE SYSTEM: THE COMMISSION'S VIEW OF PUBLIC SECTOR CHANGE

Dr Michael Wood
Chair
Wood Consulting Group
Visiting Professor
Graduate School of Business
Curtin University

Introduction

This paper summarises international and Australian reforms in the public sector over the last twenty years to set a baseline from which the recommendations and findings of the Royal Commission can be studied. The summary is followed by a review of the recommendations that bear on the public sector. A comparison with other reforms is made and several conclusions are reached about political and administrative behaviour which might assist an analysis of the state of progress in implementing the recommendations.

International and Australian public sector reforms

Reforms in selected OECD countries were placed in eight categories in a paper delivered by Pertti Ahonen at the annual conference of the International Association of Schools and Institutes of Administration in Hong Kong in July this year. Ahonen followed an OECD categorisation and listed reforms as follows:

- human resources
- financial management
- public services
- public management procedures
- reorganisation
- deregulation
- privatisation
- organisation for reform

The attached table shows a summary of these reforms between 1980 and 1994. The greatest effort was applied to general improvement and reform, manager improvement, reform and training, financial management and budget reform, retrenchment, increasing agency autonomy and de-concentration, the simplification of laws and deregulation. Privatisation, decentralisation in national, regional, state or local governments, reform of information systems policy, auditing reforms, quality programs, improved supply and procurement policies and improved industrial relations had made relatively less progress.

The table also shows that the rate at which the reforms were taken up varied; these variations are probably due to political, economic and geographic factors. Some reforms have been continued over time, such as those in financial management and manager improvement; others were attempted fitfully or started then stopped. Australian reforms, that is those undertaken by the Commonwealth government, are shown as strongest in general improvement and reform, manager improvement,

financial management and budgets, general public services reform and acquisition or procurement reform. The Commonwealth government published in 1992 its "The Australian Public Service Reformed" (Australia 1992) and the table attached, provides a summary of the progress of nominated reforms in agencies where they occurred "to a great extent."

Australian reforms

Ahonen was exploring issues relevant to his native Finland and had not seen earlier Australian work which documented and analysed public sector change and reform over a longer period and which included the states as well as the Commonwealth. Smith and Weller (1978) write of inquiries in South Australia (1974), Victoria (1974), the Commonwealth (1976) and New South Wales (1974). There was later an inquiry in Tasmania and another in New South Wales. The scope of these inquiries, their terms of reference and the method of meeting them varied; some had sole Commissioners while others such as the Commonwealth Coombs inquiry had five and abundant resources to support them.

Several inquiries were expected to provide advice and recommendations on matters other than the apparent mechanics of running the apparatus of government. Coombs was directed to give "particular attention to the relationship between the Australian Public Service and statutory corporations and other authorities with the Parliament, Ministers and the community." It was also to report on parliamentary scrutiny and control of administration and the responsibility and accountability of public servants and their participation in forming policy and making decisions. (Commonwealth 1976). Similarly, the Reid inquiry (Commonwealth 1983) made recommendations on Ministerial responsibility.

There were also significant reforms in administrative law which were stimulated by the Kerr Committee Report and resulted in the Administrative Appeals Tribunal and contributed to the appointment of the Commonwealth Ombudsman and the review and rejection of Ministerial and public service decisions.

The inquiry in South Australia especially positioned that state for a steady and regular program of reform which continues to the present day. The states which undertook no public review of their administration or the relationships between it, Ministers, the Parliament and the community were Western Australia and Queensland. The former is the focus of this paper. Was there no change taking place here when change was under way east of the border?

There was change locally. The former Public Service Board studied the reviews conducted interstate and assessed their application to Western Australia. The Public Service Act 1978 was the product of this work and included, for example, a provision allowing the appointment of leaders on contract. Representatives of the government also approached a leading academic before the 1980 state election and discussed public sector reform. The Parliament debated the formation of a system of parliamentary committees (Wood and Hollier 1991, 369-374) and established the Public Accounts Committee in 1970. In 1974, it set up the country's first Parliamentary Commissioner for Administrative Investigations (the Ombudsman).

The Legislative Council formed the Standing Committee on Government Agencies in 1982 to investigate, evaluate and monitor the performance of government agencies. Its jurisdiction was to include all agencies set up by statute and through improved annual reports, it would facilitate the evaluation of agency performance.

By the date of the election of the ALP government in March 1983, the public sector was administered through a major statute, the Public Service Act, which covered about one-fifth of government employees. The remainder were subject to the requirements of agency-specific statutes and accountability was routed through Ministers, the Ombudsman, the Auditor-General and two important Parliamentary

committees. Elections were administered through the Electoral Department whose head was responsible to a Minister.

The development of policy and its implementation were carried out with the authority of statutes, the Minister or Cabinet. Unlike other states, there had been little coordinating capacity realised in the Premier's Department and little support and analysis given to Cabinet itself by the sort of unit envisaged by the Haldane Committee in England in 1918.

The ALP government updated the role and work of the Premier's Department and added in far greater numbers Ministerial advisers to the offices of Ministers (Beggs 1983). During its term, it either initiated or responded to demands for change to the Audit Act 1904 (now the Financial Administration and Audit Act 1985), the Electoral Department (now the Electoral Commission with an independent Commissioner reporting to the Parliament) and the Official Corruption Commission (1990) with powers that were disputed and reviewed in 1991-2. The Public Service Commissioner issued guidelines for the behaviour of public servants in 1988 and though they applied only to staff employed under the Public Service Act, the Commissioner hoped they would be taken into account across the public sector. It also passed the Freedom of Information Act in 1992, first promised by the ALP during the 1983 election campaign.

Other changes bearing on the public sector were initiated by the former Public Service Board in 1985 and 1986 and senior officials from the Public Service Commission, Treasury and the Department of Cabinet proposed reforms in publications issued in 1992. The Public Service Commissioner also made proposals for a new legislative framework in 1991 and 1992.

The Royal Commission

What did the Royal Commissioners make of the system for the operation, accountability and review of government?

Cabinet

The Report reviews the role of Cabinet, collective and individual Ministerial responsibility and the "malleability of ...conventions" which sustain cabinet government and which make "categorical statements about them both difficult and potentially misleading". (Report, 4.2.1) The Report notes that "Cabinet became a diminished institution", that there "was a disturbing trend towards the denial of any collective consideration on an informed basis of some major decisions" and that "there was a clear disregard of the formal cabinet procedures to which both the Burke and Dowding Governments were ostensibly committed...in some crucial meetings of Cabinet in late 1987 and 1988... no record ever appears to have come into existence, no agenda, no submissions, no recorded decisions." (Report, 4.2.7)

There is praise for guidelines issued by the Department of Premier and Cabinet to assist Ministers with Cabinet conventions and procedures:

"...the guidelines themselves reflect a proper understanding both of the purposes of Cabinet and the procedures which should be adhered to so as to ensure not only the efficiency and effectiveness but also the integrity of cabinet operations. "

There is a substantial gap between the guidelines and the behaviour of Cabinet and the Report rightly asserts that the Premier should bear ultimate responsibility for the "effective operation of the system." (Report, 4.2.10)

In order to stress the importance of record keeping to accountability, the Report recommended that the Auditor General be given access as of right to cabinet records for functions of his office and that the proposed state archives authority monitor compliance with standards set for record creation, maintenance and retention. (Report 4.2.11).

Independent agencies

The Report considered that the agencies responsible directly to the Parliament have their powers expanded (Auditor-General, Public Service Commissioner or the Standards Commissioner) or be replaced by a new agency (Commissioner for the Investigation of Corrupt and Improper Conduct to replace the Official Corruption Commission). These, along with the Ombudsman and the Electoral Commissioner were to be designated independent parliamentary agencies in the legislation establishing them. The independent agencies would then cover, in summary:

- the use of financial resources (Auditor-General)
- the management of the machinery of government and the use of human resources (Public Service Commissioner or Standards Commissioner)
- the electoral process (Electoral Commissioner)
- the behaviour of politicians and officials (CICIC) and
- decision making and use of power by officials (the Ombudsman)

The five agencies were no more in number than those already reporting to the Parliament but in some circles, the recommendations were portrayed as adding more to an already overloaded system. Together with reform to the processes of administrative law (Report 3.4 and 3.5), the Legislative Council acting as a house of review (Report 3.9 and 5.3.7), the financial independence of Parliament being achieved and the Commission on Government inquiring into the "means best suited to be adopted by the Parliament to bring the entire public sector under its scrutiny and review" including the use of parliamentary committees (Report 5.4.4), the Royal Commissioners provided the community with a coherent vision to reduce the risk of aberrant political and administrative behaviour and for securing change in the public domain and in its accountability to the electorate.

The Report occupies ground not taken by the public sector reforms which have swept the selected OECD countries shown in attachment one; it believes that the foundations of the system of government should be laid for the construction of a democratic parliament capable of exercising scrutiny and itself open to scrutiny through agencies reporting to itself.

Changing the public service

The implied principle of scrutiny and the formation of a service of integrity was to be applied to the public service by the passage of a new Public Sector Management Act, the extension of the powers of the Public Service Commissioner to the whole public sector or the same functions being carried out by a Public Sector Standards Commissioner, a review by government into managerial, industrial and other matters involving the service, and preventing the Department of Cabinet from providing party political services (Report, 6).

The Report states (6.1.2):

"... with regard to the state of the administrative system itself; a complete review of its structure and organisation is required ... much of which has passed for reform has been designed more to further the managerial objectives of government than to give organisational integrity to the system itself "

It also called for legislation which would bring "greater integration, standardisation and community of purpose to the public sector" (Report 6.2.1). Most significantly, the report swam against the tide of public sector reform in other states when it sought unequivocally for the formation of an independent body "responsible for the general oversight and supervision of the administrative system" (Report 6.2.2). The Commissioners sought an organisation which would be the protector and the custodian of the values "which should inform the conduct and operations of the

whole of the State's public sector" and they noted that other states had diminished the significance of such agencies.

The Report recommended (6.2.4) that an office of Commissioner of Public Sector Standards be created in a statute which included the principles to be adhered to in public administration and which charged the Commissioner with keeping the overall organisation, management and operations of the public sector under scrutiny and review. The office was to establish standards for agencies, to ensure compliance with those standards and to report to the committee of the parliament responsible for the organisation and operations of the public sector.

The Report also sought:

- observation of the merit principle for appointment at all levels
- clarification of the roles of chief executives and their relationship for management of their organisations with the Public Service Commissioner
- balance between the interests of Ministers in the appointments of chief executives with the need to safeguard public service interests
- prevention of intrusion by parliamentarians into any and all appointments to the public service
- separate legislation covering employment arrangements for ministerial staff
- prevent the corrosive effect of ministerial staff dealing with public service staff in departments
- agreement between the minister and the chief executive officer on how communications should be made between ministerial staff and the staff of a department if not through the leader
- whistle blowing legislation
- standards of conduct for officials

Assessing the Commission's view

The Commission's view of public sector change was that the fundamentals should be set right. Other Australian and overseas reviews and changes have aimed at the introduction of specific programs to improve efficiency, reduce the size of the public sector or meet the ideological position of elected governments. In getting the fundamentals right, the Commission correctly pointed to the need for a legislative framework to direct the behaviour of participants in the public sector and so was clear about the central contents of legislation for public sector management.

There will continue to be debate about the Commission's views on the electoral system though the logic of having the Legislative Council as a house of review ought to be accepted. Similarly, having independent officers responsible to the Parliament and for a statutory framework governing the whole public sector and the need for adherence to standards through codes of conduct or registers of interest are recommendations little in dispute.

There is a long list of specified matters derived from the Report contained in Schedule 1 of the Commission on Government Act 1994 which will provide more opportunities for government to get fundamentals right. However, there is still an unfinished agenda which can build on the fundamentals and whose investigation should give the Parliament confidence that the public sector is structured, resourced and delivering services well and efficiently. Three important areas stand out for consideration.

Cabinet's role as the link between the legislative and executive arm, as a coordinating institution, is being altered by the increasing prominence of the office of the Premier, the public service agencies supporting that office and the electioneering methods followed by political parties. The interdependence between government agencies and functions also makes it very difficult for individual Ministerial responsibility to have any meaning and the practice of delegating authority, a

necessary step, tempts politicians to push down to others blame for errors. The prominence of the Premier diminishes the likelihood of individual Ministerial responsibility as well and the prospects for the practice ever matching the ideal in the Westminster system are further reduced. There are questions for Ministers about their roles and work and the extent to which they need preparation for office through a Parliamentary professional development system.

The legal and financial relationship between the Commonwealth, the states and local government, quite apart from the political dimensions of those relationships, requires the best possible coordination for the most effective delivery of services to Australians. This implies that the procedures for evaluation and review need to be sound and easily understood and that the structure of the machinery needs review, as the Commissioners stated.

Finally, the political rights and obligations of public servants need to be debated and agreed on as far as possible. The Commission on Government might be satisfied with the provisions of the existing code of conduct, this is not the same as taking politicians and the public through a consideration of the factors which brought about the code.

Conclusion

There is no shortage of material from which further public sector improvements can be drawn. Indeed, much of it is contained in work already undertaken by the Standing Committee on Government Agencies, the former Public Service Commission or the Royal Institute of Public Administration Australia. It is to be hoped that the Commission on Government will interpret its powers so as to include the matters raised and do so in a way which involves the public.

Part of the price for not having a public review of the machinery of government and the exercise of power by all the members of the public sector when the less isolated parts of Australia did in the 1970's was that a generation of politicians, public servants, journalists and the community missed the opportunity to develop their concepts about the public sector. Public reviews are not panaceas for the ills of public life but they have a role to play which was missed in this state.

The Report of the Royal Commission stands out in the international arena as a document aimed at getting the fundamentals right. It is remarkable for its focus on the essentials and for its coherence in assembling them in the interests of promoting accountability. It had to leave the hard work of influencing political behaviour to those who themselves were instrumental in having the Commission established or who are able to contribute now because of the offices they hold.

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WA INC: FAILURE OF THE SYSTEM OR CRIME OF THE EMPLOYEE?

Associate Professor Alan Peachment
Curtin University of Technology

The question I pose in the title of my paper would seem to have a self-evident answer.

WA Inc was obviously a failure of both the system and a crime of the employee. The question remains however, which part of the system failed and which employees committed the crime.

In addition to wanting to re-affirm your recollection of what the Royal Commission said in regard to that question, I also wish to raise further questions based on my own research.

Thus, I shall argue first, that so far as the public sector is concerned *WA Inc* was a -

'crime' of select public servants, politicians /ministers and advisers due mainly to a 'meltdown' of public sector ethics and a serious compromise of the ministerial advisory system;

and second, that WA Inc was also a failure of the political system or, more specifically, the Westminster-Whitehall model as practiced in Western Australia (bi-cameralism, parliamentary accountability and a responsive public service etc)

I will also suggest that *WA Inc* was in part attributable to shortcomings in the wider socio-political system, including federal-state financial relations and the oversighting role played by the media in relation to government. *WA Inc* also points to the critical role played by industrial development policy in determining the state political agenda.

I shall conclude by arguing that while I agree with many of the calls for post-*WA Inc* reform, reform can be taken too far and may shackle government action as well as pose a threat to our liberty. Our system of representative and parliamentary government will always contain the potential for corruption, however, we should view this potential as a positive sign and dampen any over-high expectations for the total elimination of corruption.

I will also suggest that there is danger in blaming prominent individuals alone for what happened. Nor should we rely on a new ethical awareness to solve our problems

WA Inc: Crime of the Employee:

Politicians (Ministers)

The WA Inc Royal Commission produced a damning indictment of our public sector leaders. It wrote of former Premier Brian Burke that he

'acted improperly, his conduct being discreditable and amounting to a substantial breach of the standard of rectitude to be expected of a person holding the office of Premier''.

Of former Deputy Premier David Parker it wrote he was

'evasive and quite lacking in conviction', that he was 'grossly negligent', and that 'by any normal measure of the conduct of a minister of the Crown, his behaviour was grossly incompetent, if not absurd'.

Of former Premier Peter Dowding the commission found that his evidence was *'designed to evade the obvious conclusion', that he had 'not been frank and that he was unconvincing'*. The behaviour of other former ministers, from both major parties, was found wanting.

Senior Public Servants

The commission found that four senior public servants had behaved improperly and these were charged under the *Public Service Act*. The case of former Registrar of Co-operative and Financial Institutions, John Metaxas, raised important questions as to the appropriate role of the public servant when fulfilling an advisory role.

Ministerial Advisers

During the eighties it was often difficult to establish whether particular individuals were public servants or ministerial advisers as many of the latter became the former with little or no change in role. I shall regard Len Brush, and superbureaucrats Kevin Edwards and Tony Lloyd as ministerial advisers for the whole of their public service career. All three individuals were parachuted into senior executive positions; in the case of Brush and Lloyd, positions in retrospect beyond their capacity.

The commissioners regarded Brush's conduct as most definitely improper, his appointment they wrote would undermine public confidence in appointments to senior public service positions. Edwards was found to have acted improperly in translating the desire of Burke into specific requests of government instrumentalities. Lloyd was found to have failed to discharge his duties as a managing director and to have engaged in quite extraordinary conduct.

Reflecting upon the commissioners' comments, and placing the widest meaning on the term *'crime'*, clearly WA Inc may be selectively regarded as a crime of the employee - that is, ministers, senior public servants and ministerial advisers. In fairness, it should be said that some of these individuals have defended their actions on grounds of *'situational ethics'* as did Oliver North and John Poindexter in the United States and as others have done in Britain. This defence has something going for it - at least in some cases.

These Royal Commission findings do not tell the whole story unfortunately as they rely on the evidence of a relatively few key individuals. In some ways the Royal Commission carried out its investigations like a drunk searching for dropped keys under a streetlamp. There is no reason to suppose he dropped them there, but it is the

only light around. Of course, some keys did lie near the streetlamp but in order to reveal other keys a bright torch was needed to probe the dark corners of the public sector. At a minimum a survey of the mountain of first hand experience of the *WA Inc* years known to the senior echelons of the public service was required. Such a survey would have placed the more dramatic events in context and would have added significant authority to the commission's findings as well as providing a benchmark against which to measure future progress.

Thanks to former Premier Carmen Lawrence, a survey of 351 senior executive service (SES) personnel was in fact undertaken by Curtin academics in late 1991. This revealed a huge amount of as yet unpublished information related to ethical practices in the service.

The survey revealed that the typical SES executive had worked in the public sector for twenty one years and in that period had worked for 3.5 agencies. Sixty one per cent had worked in the private sector for an average of eight years. The great majority are highly qualified and together they represented a vast resource of untapped knowledge.

Amongst other things most SES respondents believed that the ethical standards of the service are higher than those of either the private sector or the wider community. Most also believed that ethical standards had fallen in recent years and that the strongest influences on their own ethical behaviour was peer behaviour together with the ethical climate of their agency. Furthermore, the overwhelming majority believed that there was no agency pressure for them to compromise their personal ethics or, if there was, the pressure was weak. Thirty per cent had never experienced conflict between their personal ethics and the ethics of the agency while almost forty per cent experienced such conflict between two and five times over a five year period. The great majority asserted that if a ministerial directive was contrary to the Code of Conduct, they would point out to a minister that this was in fact the case.

Of more relevance to this paper however, are the responses of those senior managers who believed that ethical standards had fallen and that the decline was linked to ministerial advisers in one way or another.

The repetitive terms used to express this view included - political jobs for the boys, political appointees, appointment of Labor '*friends*', politicisation of the public sector, parachuting of political appointees, appointment of cowboys and a government promoted public service culture where looking after your '*mates*' at public expense became acceptable behaviour.

Many of these respondents elaborated their views saying that, *noblesse oblige* was rubbish as old fashioned, that there was a lowered ability to accept the validity of contrary views, and this in an economic and environmental climate which increased the perceived cost of not having one's views prevail.

Another wrote that one had to be more devious to achieve anything against the tide of political corruption and interference. A number noted that the new breed of advisers did not have the tradition or culture of public service, for example, duties, obligations, loyalties, standards and probity, and had been selectively recruited, poorly inducted and trained. It was asserted that these people had short term agendas and were subservient to ministers wishes, not the public's well being. In a similar vein another respondent noted that changes at senior levels has resulted in the appointment of people who did not even know how to behave in a legal or moral sense let alone an ethical one.

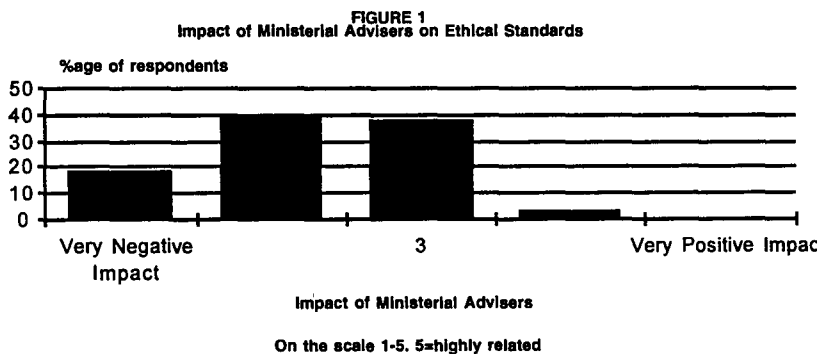
Others pointed to the negative role of outside influences stating that some entrepreneurs and government leaders and politicians were corrupt and that this would flow down the line; another respondent blamed the move away from 'Westminster' standards and a poor understanding of public administration. A number noted the arrogant behaviour and attitude as well as the lack of leadership from politicians and business leaders. Business people without traditional public sector ethical values, it was claimed, had taken up senior positions in government and there was an 'impression' that promotion was dependent at high levels on not rocking the boat.

Associated with this was the apparent belief of some people that they transcended the law and accepted procedures. Selfishness, greed, and bribe takers were terms used by some. One blamed the decline in good ethics on political interference and decision making by officers without relevant qualifications and training, of executive decisions made by managers who did not understand technical, scientific and professional problems and issues.

In a related vein another wrote of the rapid expansion of the SES over the past five to seven years and how this had produced younger, politically motivated and less experienced staff. These managers, it was claimed, were more often aligned with the ALP than the Liberals and found it more comfortable to support ALP government beyond their usual ethical boundaries.

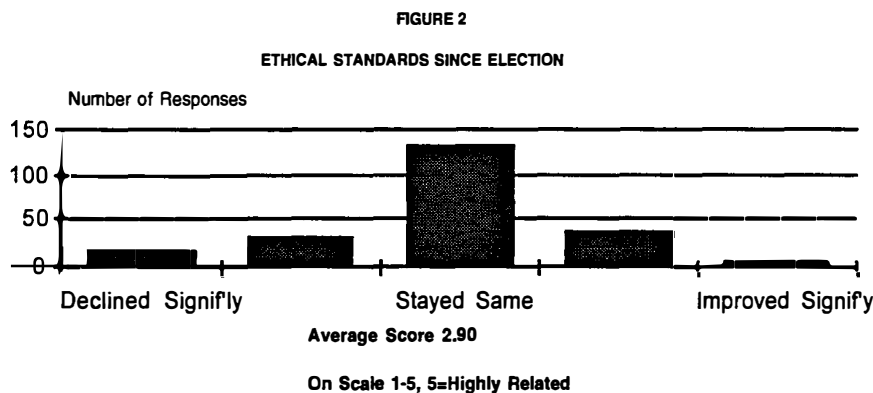
Another wrote that the trend was to provide advice which senior officers and ministers wanted to hear, whereas previous ministers relied on departments for advice. It was also alleged that there was an unwillingness on the part of bureaucrats to speak their mind. This attitude produced a blurring of the previous distinction between the bureaucracy and the politicians.

When asked what impact the presence of ministerial advisers had on the ethical standards of public servants the responses were devastatingly negative as the following figure depicts.



Before leaving the insights provided by survey material, I should point out that an almost identical survey was held of mid-level managers (levels 4-8) only a matter of months ago. In broad terms the results of this second survey endorsed the results of the first. However, one additional question was asked: 'In the time since the 1993 State election to what extent has the standard of ethics changed in your department or agency?' The response indicated that far from improving, or even staying the same, the average response on a five point scale indicated that ethical standards were perceived to have declined!

When all of this qualitative evidence is weighed alongside the judgements of the Royal Commission the conclusion that *WA Inc* was a crime of select senior 'employees' is given major endorsement. Survey evidence also suggests that in terms of practice the same unethical odour continues to hang over important areas of government activity.



WA Inc: Failure of the System

I regard the system that failed as a vast interlocking directorate which includes parliament, public bureaucracies, the media, high flying entrepreneurs, consultants, select academics and public servants. It must also include relationships between political parties, their leaders and their elected nominees in parliament, especially ministers; between ministers and their key advisers and between key advisers themselves.

Attempts to draw linkages and connections between the various players in this directorate tend to look more like the wiring diagram of an ICBM missile than anything else. However, that this system failed is not seriously in doubt.

For example, the system failed when party leaders and others refused to conditionally waive parliamentary privilege in order to assist the investigations of the Royal Commission. Indeed, by making certain statements unexaminable, this action may have crippled the commission's investigations at a stroke.

The most successful attempt to explain this complexity has been that of Elizabeth Harman (Murdoch University). Nominating accountability as one of the main problems, Harman argues that *WA Inc* can only be understood in the context of the historical political struggle for power between the Executive and Parliament or, more accurately between the Executive (especially a Labor one) and the Legislative Council.

Harman's second argument is that *WA Inc* was not a single phenomenon but several quite distinct phases in the relationship between government and business. Thus the motives, key actors, actions and outcomes differ in each phase.

Harman's six phases are not mutually exclusive and are only roughly chronological. Phase one is the Burke government's creation of new business- government enterprises (GBE's) between 1983-84 so as to take the Labor government strongly into commercial activities following its election win.

The second phase was the 'realignment' of the old GBE's which included the Government Employees Superannuation Board and the government insurance arms which later became the SGIC, the Rural and Industries Bank and the State Energy

Commission. Harman's term '*realignment*' here is, I suggest, a euphemism for something much more sinister.

However, her further comment that these changes went largely unnoticed at the time and that the media focussed on the wrong targets, throws a powerful light on important developments.

Harman's third phase, The Partisan Element, was concerned with the establishment of overt links between big business and the ALP, and in particular with the establishment of the John Curtin fund raising foundation.

The fourth phase was the Rights and Property Deals which concerned the involvement of government with prominent entrepreneurs in a range of deals relating to older public sector sites. The fifth was the rescue from financial collapse of local financial institutions from 1987 onwards, including the first of three Rothwells rescues.

Harman's final and most complicated and expensive phase occurred in 1988 and involved the government purchase of a share in Petroleum Industries Corporation Limited (PICL) and the second and third attempted rescues of Rothwells. Harman argues that the second rescue was a scam to allow corporate players to recover funds, not, as we now all know, to assist in Rothwells liquidity crisis. Realising the highly adverse publicity that would result from a third Rothwells rescue the government, with the connivance of private interests, dressed it up as an investment which was attractive to long term state industrial development. The legislation to allow the deal was defeated by the Legislative Council and it collapsed. Several of the major variables interacted here.

Harman's six phases help clarify this complex situation however, her categorisation scheme would benefit from the addition of three further factors which should be regarded as contextual to the main plot.

Managing the Media

For example, it is arguable that both running through and affecting each of Harman's six phases is first, the media. In the modern world the media is a potent component of accountability in government - a concept that is a major focus of Harman's scheme.

Journalist Peter Kennedy has written much on how some members of the press in particular were seduced by Brian Burke and how this, in effect, helped Burke '*manage*' the news. Burke was extraordinarily accessible to the media and enjoyed strong rapport with both journalists and media executives. As a result critical reporting suffered as the media reported the parliamentary circus and not political process.

We now know that those elements of the media that attempted to be critical of the government took the risk of being served with a writ. The media that was not able to be managed was gagged. Had the High Court made its recent '*free speech*' interpretation ten years ago *WA Inc* would never have matured.

Ministerial Advisers

Much the same can be said for the already discussed impact of ministerial advisers. Primary evidence from surveys now reveals that the major infusion of ministerial advisers, that occurred from day one of the Burke regime, did major political damage far beyond their relatively slight numbers.

Vertical Fiscal Imbalance (VFI)

Finally, there is the factor of federal-state financial relations and what is termed vertical fiscal imbalance (VFI) that is the revenue incomings and outgoings of the two levels of government. This factor has long been of serious concern for all state governments as it hobbles their freedom to pursue preferred policy options. Former Premier Burke acknowledged this as a serious problem as early as 1983.

By comparison with other mature federations such as Canada, Germany and the United States of America, VFI is severe in Australia. In 1991-92 Australia's Commonwealth government is estimated to have collected about 73% of the total own source revenue generated by all levels of government but to have spent only 52% of total own purpose expenditures. Most of the remainder is transferred conditionally to the states severely constraining the development of new or alternative policy options by the various state governments. In WA involvement with the private sector was seen as a way of supplementing the state's revenue base in a way that denied Commonwealth intrusion.

These three factors, the management of media criticism, the more extensive role of ministerial advisers on the conventional advisory mechanisms, and the desire to reduce the negative impact of federal-state financial relations on state policy initiatives would each have had some impact on all six of Harman's categories. As contextual factors they either shielded government from the wider implications of accountability, distorted rather than enhanced ministerial-adviser relationships, or offered a strong incentive for government to search for and utilise innovative and perhaps risky revenue raising initiatives.

What We Should be Doing

In posing the question: what should be done, I suggest that the central dilemma concerning unethical behaviour and political corruption is not whether it is personal or systemic in nature. The answer surely lies somewhere between the two and we should be dealing with the individual and the system together. Let me expand briefly on this theme.

Deal With the Individual and the System Together

The perspective that the individual is the source of corruption assumes that its basic cause is the inclination of specific individuals to abandon themselves and their duties to proffered temptations and violate the system's norms. This view may be satisfying for two reasons.

First, it reinforces the comfortable notion that corruption is fundamentally a deviant position - that turning out the occasionally ill-mannered scoundrel is all that is needed to keep the body politic healthy, if not immune.

Second, it endorses the view that it is the apparent aberrant individual who commits the corrupt act. It follows that it is the isolated individual not the system that should be punished and should suffer. Therefore the solution should be tailored to the person. The demon once exorcised does not impugn the sanctity of the system, much to everyone's relief.

These personnel oriented solutions, while necessary in the operation against corruption, fall short of any durable correction to the on-going malady because they ignore systemic roots. History reveals that corrupt acts have occurred and will continue to occur in spite of social condemnations, severe penalties, appeals to disbarments, tighter regulations and auditors' general. Indeed, measures concerned

with individual temptations such as additional red tape, tighter codes and less bureaucratic discretion might actually increase the motivations and opportunities for corruption and could exacerbate the condition by making it even more difficult for government to respond.

With increased oversight the vulnerable official would have greater control over the now more restricted bottleneck and therefore be able to extort a higher market price. As a result we would be left with a legacy of control that in the name of honesty makes it harder for government to work efficiently. Clearly, acts against the individual do not rid the system of the opportunities for ill-gotten gains, a condition that others will willingly exploit. The system and the individual should be dealt with together. It follows that the second report of the Royal Commission should be taken seriously.

Don't Put the Blame on Individuals

Every academic welcomes the opportunity to insert the name of a well known philosopher into a conference paper. My chosen philosopher is Friedrich Nietzsche.

I select Nietzsche not for his philosophy but for the fact that he was held to be directly responsible for the both the outbreak and conduct of World War I and in particular its brutality. In other words he was credited with the remarkable achievement of shaping the principles, policies and prejudices of a whole nation.

Attributing blame to an identifiable individual like this was a deliberate British strategy for justifying the war in moral terms and it had the effect of catapulting Nietzsche out of obscurity and making him a household name. This was fairly astonishing as Nietzsche had died in 1900!

A second effect of this strategy was to reduce Nietzsche to the level of a melodramatic villain. This tactic provided intellectual support for a British assault on the moral and cultural high ground and reinforced the claim that not only was Germany responsible for the conflict but that it was part of Germany's nature to provoke and prosecute war. *Ipsa facto*, through Nietzsche, the entire German nation had become the enemy and had become demonised.

It would obviously be stupid to draw any parallels between Nietzsche and jailed Labor leaders' responsibility for the *WA Inc* debacle, but I believe that there are lessons to be learned from the Nietzsche experience for the post-*WA Inc* period.

For example, the manner in which former senior ministers, when jailed, are cast as the lone villains gives the impression that they were solely responsible for the mess. Of course they bear much blame. In addition, the further tactic of blaming the entire ALP cabinet for the *WA Inc* disaster places a meaning on collective cabinet responsibility and confidentiality which belongs in the world of Dicey and is shown not to exist on almost a daily basis in Australian government.

The real intention of course is to claim the moral high ground and demonise the ALP. This is a legitimate political tactic, but it takes the attention away from additional sources of explanation about the wider causes of *WA Inc*.

Don't Rely on Good Ethics Alone

The second response to *WA Inc* on which I would like to comment is the tendency to attempt to tighten standards of ethical behaviour by implementing new codes of conduct and the like for public sector employees. The new *Public Sector Management Act (1994)* for example gives extensive mention of ethics and, in its description of the

new office of Commissioner for PS Standards, the main emphasis is on the promotion of good ethics. This response alone is not one from which we should expect a great deal.

In the first place the codes apply to the public sector alone, that is, public bureaucracies, and while there are some pointed questions that could be posed about public sector behaviour in the eighties, the evidence we have points strongly to the fact that public sector ethical standards were not a major part of the problem. The problem in the public sector, as I have already suggested, lay more with the imposed advisory system and its questionable ethical standards.

In addition to being aimed at the wrong part of the problem, research makes clear that codes of conduct have little effect on the behaviour of individuals. Over 70% of WA Senior Executive Service respondents believed there to be a low awareness of the existing Code of Conduct among public servants and a much larger percentage believed that the Code was either neutral or (highly) ineffective. Furthermore, codes may bring about a negative effect by producing a false sense of reassurance among senior management.

Good ethics begin at the top, by that I mean within the ministry itself, and should be given more attention. May I illustrate what is required by quoting the words of Lord Hartington, 8th Duke of Devonshire and then Chief Secretary for Ireland who, in 1874, wrote to a colleague -

I have been looking at my Secret Service account to see what is available in case money is wanted for elections. I find I could spend about £4,000 ... would you ask (the Permanent Secretary) to find out what oaths I took as Chief Secretary and whether there is anything in them as to the disposal of Secret Service money, which would prevent my using it for electoral purposes ...

While Hartington was writing at a time of widespread electoral bribery his ethical standards compared with those of David Parker will not have escaped you.

Accountability

The third response to *WA Inc* on which I would like to comment is that of accountability. I have been as outspoken as most people in calling for greater accountability to be exercised in the political and bureaucratic systems. However, accountability should not be seen as an end in itself regardless of either cost or of its wider political implications.

When the demands of accountability begin to affect adversely the behaviour of managers whose prime responsibility is to deliver a service to the community, then it can become an impediment to good government. Managers today must manage effectively and efficiently. They have to satisfy the customer, account to the Auditor-General, submit to examination by a wide range of parliamentary committees and respond to the Ombudsman and the new Commissioner for Public Sector Standards to ensure that all relevant guidelines, statutes and regulations are adhered to. They can be roundly criticised with the knowledge of hindsight by a wide range of review agencies and are regularly taken to task by morning talkback, 40 second soundbite media.

The incentive for public sector managers to perform well is lessening and there is good cause for expressing surprise that, in government, anything happens at all. In NSW for example, accountability processes represent 10% of the state budget (\$2b). In our concern for probity and proper process those of us who call for improved

accountability should not forget the main game - to deliver a service to the community. You have to come down to trust that people are managing properly.

The new Public Sector Management Act adds a further weighty layer of oversight to an already overburdened system. Perhaps we should consider Edward Gibbon's nineteenth century warning that -

Corruption is the most infallible symptom of constitutional liberty

and be prepared to accept some minimum measure of it.

Gibbon's view envisions a police state so invasively thorough in terms of accountability that it could eradicate any and all signs of unsanctioned activity, although to date even the former Soviet Union did not come close. In the words of one writer "a prosecutorial class with no sympathy for human frailties can be a much greater danger to a democracy than the simple peddling of influence". I suggest that most West Australians would agree that it would be preferable to accept a limited amount of corruption in line with democracy's other permissive means inherent in loosely structured, representative government than to risk the consequences of a society based on authoritarian controls.

It is important to ask how many layers of oversight and legal penalties we can realistically have to limit corruption and still fall well short of repression and authoritarian rule.

At one extreme my point is illustrated by Lord Grenville who, in 1806, shocked a fairly worldly British political establishment by retaining the sinecure of Auditor of the Exchequer while at the same time holding the office of Prime Minister, thus technically auditing his own accounts. This no doubt cheapens the cost of accountability to the point of doing away with it. On the other hand however, it is also possible to have too many safeguards on the spending and other actions of government, safeguards which may make accountability prohibitively expensive or which make it a threat to individual liberty.

What we need is to re-design accountability and change it from being the equivalent of the chunky Vickers Vimy aircraft that recently flew from Britain to Australia, to being the equivalent of a sleek F18 fighter.

Dampen Expectations of Perfection

The American experience demonstrates that corruption continues despite the glare of Watergate, Irangate and all the other gates. The Japanese experience, from which the abbreviation *Inc* was first taken holds similar lessons.

Commenting recently on the Savings and Loans and Iran-Contra scandals in the US *The New Yorker* magazine wrote -

the idea that the system itself has problems ... has few champions among the people who are in a position to do something about it ... It is much more convenient to reduce our political crises to the evil deeds of a few isolated figureheads (eg Oliver North with his shredder and delete button) and to confine reform to the task of putting away the latest crop of villains - a never ending task that merely punctuates our scandals rather than resolves them."

In Australia we have the same systemic conditions and incentive structures that incubate and inculcate corruption and improper behaviour. Medicare fraud, social

services fraud and excessive private sector regulators, the costly and often irresponsible advice of the big eight accounting and legal firms, are proof of the weakness of the greater government intervention argument. Can we afford, and do we want yet another layer of oversight?

The criticisms of *The New Yorker* could be applied here in WA where the coalition parties have moved at a snail's pace, if at all, in implementing the Royal Commission's recommendations- especially those concerned with reforming the political system. This lethargy merely brings the parliament and political parties into further disrepute. The good news is that there are policies that can be executed to reduce the incidence of political corruption. The bad news is that the easy remedies (usually ascribed to individuals) are not effective and the hard ones (dealing with systemic issues) are difficult to implement.

Nowhere is that lesson more evident than here in Western Australia.

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REINVENTING GOVERNMENT: THE OPPOSITION'S VIEW

Jim McGinty MLA
State Labor Leader

When Geoff Gallop and I took over the leadership of the State Opposition just three weeks ago we embarked on a journey of renewal and reinvigoration.

On the day we were elected to the leadership I apologised to the people of Western Australia, on behalf of the Australian Labor Party, for what has become known as WA Inc.

I knew the feelings of hurt and betrayal felt by most Western Australians and particularly by Labor voters.

I said I appreciated the strong feeling in the community that justice must be done and that every citizen must be equal before the law.

I also appreciated that, beyond the relatively narrow issue of pursuing people who broke the law, there were many lessons to be learned from the \$30 million Royal Commission, particularly in the area of better government.

It was for that reason that I gave an assurance that the Labor Party in Western Australia embraced, without exception or qualification, all of the recommendations of the Royal Commission in its new accountability package.

Those recommendations will each significantly enhance our democratic system of government.

What was WA Inc?

WA Inc is not about everything that happened during the decade of Labor Government in WA from 1983 to 1993. Much of what occurred during that decade can properly be described as solid achievements.....achievements of which the ALP can be proud, that deserve recognition.

Some of the outstanding achievements of Labor in Government include:

- reopening the Perth-Fremantle railway line and building one of the world's finest passenger electric railway systems,
- major initiatives in public housing, with an end to the creation of ghettos for low income earners,
- above-average economic growth,
- legislation to enhance and safeguard the egalitarian nature of our society, backed up with administrative action to improve the status of women in particular as well as other disadvantaged or marginalised groups,
- family, cultural and community facilities,
- recognising the enormous contribution of senior citizens and providing special services for them,

- modern and fair occupational health and safety laws which made workplaces both safer and more productive,
- the establishment of a tripartite industrial relations system with an emphasis on dispute resolution through consensus rather than conflict.

These are some of the tangible achievements. Other achievements, which are just as significant, include:

- establishment of new levels of financial accountability for government bodies through the Financial Administration and Audit Act,
- The Disclosure of Pecuniary Interests legislation,
- Creation of the Director of Public Prosecutions,
- The Freedom of Information Act 1992 and the Declaration of Political Donations legislation (which the Government still refuses to proclaim),
- The Burt Commission on Accountability,
- The independent WA Electoral Commission,
- The McCusker Inquiry into Rothwells and, despite claims it came too late, the Royal Commission into WA Inc itself.

These are all achievements of lasting benefit to Western Australians. WA Inc is not about this, the good side of Labor Government in the 1980s. It is about the failures of the State Labor Governments and business. Understanding these failures requires an appreciation of the broader failure of the corporate culture of that tumultuous decade.

Floating the Australian dollar, reducing tariffs and relaxing lending restrictions allowed Australia's corporate sector to test the limits of expansion and growth. The atmosphere of the 1980s was dominated by the "bold riders" entrepreneurs who were later revealed to be corporate cowboys. Financial institutions reduced prudential requirements, approving vast loans with little or no security and few safeguards. Banks and other formerly conservative lending establishments financed opportunistic takeovers on an unprecedented scale. The corporate cowboys were able to amass huge corporate empires based on tiny equity and massive debt.

This could only happen because of a general failure of the mechanisms of accountability in our financial sector.

Outside directors should have restrained headstrong chief executives. Accountants should have questioned dubious book-keeping. Auditors should have drawn attention to misrepresentations in company accounts. Commercial lawyers should not have approved arrangements designed to circumvent statutory regulation, and stockbrokers should not have pushed the shares of shady corporate citizens.

All of these checks and balances failed to function as they should have. All of the traditional safeguards were swept away by a tidal wave of greed. Western Australia was at the centre of the financial dealings of the 1980s. Many of the "bold riders" came from WA, and they achieved national and even international dominance of key industries, including brewing and television. The series of disastrous investment collapses which followed the stock market crash in 1987 rocked Western Australia to its foundations.

Billions of dollars were lost overnight as the total value of listed companies worldwide fell by over 25 per cent in one trading day. Many investors and companies were wiped out. Banking institutions also lost heavily, and several banks and building societies collapsed. It was within this environment that the rescue of Rothwells and the series of events which we have come to know as WA Inc occurred.

I say this not by way of justification of the events of WA Inc, but merely to put them into context.

Although the scope of WA Inc style dealings was more extensive, the heart of WA Inc itself can be identified as the process of government involvement in the Rothwells rescue package of 1987, and events leading through to the Kwinana Petrochemical project of 1988.

These events raised serious questions about:

- Firstly, the relationship between the ALP and major donors, and
- Secondly, the failure of proper processes of public administration, particularly in the governments' dealing with its majority statutory authorities.

The "greed is good" decade saw a volatile mix of ruthless entrepreneurs and ambitious politicians.... an involvement that had serious consequences for the government and for the state. Substantial financial losses were recorded by government instrumentalities. The consequences were not just financial.

Perhaps the most distressing legacy of the WA Inc years has been the undermining of the public's trust in their elected officials, and in the institutions of government. It is important that this confidence be restored.

It is for that reason that the Labor Party, under my leadership, has strongly pursued honesty, integrity and accountability in government. A strong Opposition will ensure better government. This will hopefully lead to an increase in public confidence in both elected officials and institutions of government. Of fundamental importance to the operation of any democracy is an independent and critical media.

Three weeks ago, in the landmark cases *Stephens v The West Australian and Theophanous Vs Herald & Weekly Times*, the High Court provided a timely reminder of the crucial role that freedom of speech plays in Australia's democratic development.

Due in part to restrictive defamation laws and a lack of independent and critical public comment, Western Australians were largely unaware of what was occurring during the early part of the 1980s. I consequently welcome today's headline that the States and the Commonwealth have agreed to pursue uniform defamation laws in the wake of the High Court decision.

In the 1980s, glib assurances from company directors, bankers and elected officials were generally taken at face value by journalists struggling to come to grips with a changing financial market and corporate ethos. As the Editor in Chief of The West Australian has pointed out, a case can be made that between 1983 and 1987, the media in general failed to grasp the early warning signs of WA Inc and to that extent failed as one of our accountability watchdogs.

Recognising the importance of freedom of speech to the proper functioning of a representative democracy, the High Court significantly liberalised the defamation laws in relation to politicians and public officers. This will allow and encourage investigative journalism and robust political comment. Also of fundamental importance to the operation of a democracy is that you have a democracy to start with.

This cannot be said of Western Australia.

When Labor wins in WA it is never in power. It simply wins a majority of seats in the Lower House and requires consent of the conservative parties to the passage of its legislative program. It is a veto which the conservatives frequently exercise when they are not in government. However, when the conservatives win government they also win power. They have a majority in both Houses and the necessary checks and balances are swept aside.

I make this point not merely to complain about its essential unfairness to Labor but because of the effect that the malapportionment, particularly in the Upper House, has on the operation of our systems of government and to put in context the Royal Commissioners' call for electoral reform.

Vote weighting skews the political debate in WA away from its natural equilibrium in favour of conservative and rural issues. With a vote weighting of almost 2:1 in favour of rural areas in the Legislative Assembly and about 3:1 in the Legislative Council, each party must pitch its vote-winning appeal not to the general public, but to privileged conservative voters.

Secondly, I have no doubt that this unfair system, which has guaranteed a conservative majority in the Legislative Council continuously since the first election in the 1890s, regardless of the popular vote, encouraged governments in the 1980s to bypass Parliament.

The attraction of Executive government in these circumstances is obvious. As the State Parliament won't reform itself, and introduce a system for each House of Parliament based on the concept of each citizen having an equal say in the election of the government which exercises power on their behalf, the High Court has been requested to intervene and impose democracy on us.

Ideally, the Parliament should be the source of democratic changes to our system of government. But while corrupt self-interest prevails, we must look to other institutions as the source of those rights.

The Royal Commission Report:

The Royal Commission focused attention on the mechanisms of our government in a way that has never happened before. It raised issues concerning our government institutions, the relations between them, and their accountability to the people in a comprehensive way. It examined these issues in the context of the very real problems in our system of government during the 1980s. In a sense, it was like a Constitutional Convention, with some of the most eminent jurists in the State turning their attention to the mechanisms of State Government. Clearly, it found these mechanisms to be wanting.

Allow me to read a relevant passage from the Royal Commissioners' second report:

"Individually, the matters upon which we have reported reveal serious weaknesses and deficiencies in our system of government. Together, they disclose fundamental weaknesses in the present capacity of our institutions of government, including the Parliament, to exact that degree of openness, accountability and integrity necessary to ensure that the Executive fulfils its basic responsibility to serve the public interest."

These conclusions are disturbing. But out of this process has arisen what is at once a unique opportunity, and a unique obligation. The recommendations contained in the second report of the Royal Commission represent an opportunity to transform the system of government in this State greatly for the better. An opportunity to make our state government truly open and accountable to all Western Australians.

They represent an obligation, because unless such reforms are implemented, the events of WA Inc, and the style of government which characterised the WA Inc years, may be repeated.

Premier Court made plain his view of what went wrong in the 1980's when he said:

"The fact is, there is little inherently wrong with the system of government in Western Australia."

He believes there was nothing wrong with the ship of state, merely that the wrong people were at the helm.

There has, to date, been little effective reform of the system of government since the change of government in February, 1993. Any accountability reforms were implemented by Labor prior to the election. One agency of change, the Commission on Government, was delayed for two years in its establishment despite the Royal Commissioners' recommendation it be established without delay.

Many of the Royal Commission's recommendations were meant to be implemented immediately and this hasn't happened. The Government then ignored the recommendations of the Legislative Council's Standing Committee on this matter. Further, the Court Government neutered the Commission on Government by restructuring its terms of reference to examining only matters "*relevant to the prevention of corrupt, illegal or improper conduct*". Finally, the Government appointees were criticised, as was their method of appointment.

To be blunt, the Opposition is concerned that the Court Government's hostility or indifference to the Royal Commission recommendations is reflected in their approach to COG and that what is a golden opportunity to implement a model system of democratic government will be wasted.

However, back to the Royal Commission Report. Four observations need to be made by the Labor Party in response to the report.

1. The Second Report of the Royal Commission should be viewed as *an agenda for action* and not a *topic for discussion*.

Delays in establishing COG, outright rejection of some recommendations, indifference to others and persistent reference to the political behaviour of the 1980s to justify today's non-accountable actions, demonstrate a disinterest in reformist action.

2. Accountability is now a *mainstream* political issue. Previously only a small number of academics and civic minded people were interested in the general procedures of government as distinct from particular policies and decisions of government.

The Royal Commission has changed that. I predict that the political party that turns its back on the accountability package of the Royal Commission will do so at great political cost.

3. The Royal Commission Second Report should be applauded as a *blueprint for government* of the future.

The undermining of the Royal Commissioners and their report by members of the Coalition Government reveals a strong disinclination to embrace the report.

4. The first, and so far only, commitment that I have given with the express intention of binding an incoming Labor Government in Western Australia to the *implementation* of the Royal Commission recommendations.

The New Accountability Package

We ought in no way underestimate the boldness of the vision of the Royal Commissioners in recommending the way WA should be governed. They went to the very heart of our system of responsible and representative government and subjected it to intense examination. Never before has our system been subject to such investigation and assessment. The results represent a major contribution and a decisive break from what had essentially been political thought and practice dominated by the Executive arm of government.

Indeed the Commissioners shifted the political debate in Western Australia from results to processes, from Executive to Parliament and from Government to people.

We are left with an excellent statement as to how our democratic system should work if that much used concept "accountability" is to have any real meaning. I will examine this contribution under their headings:

- invigorating the process of politics,
- the establishment of Parliament as the central agent of accountability, and
- the development of new mechanisms.

Invigorating the Process of Politics

Much has been made in commentaries on the Royal Commission about the emphasis placed on legal/administrative reform.

The fact is, however, that the Commissioners proposed a much more active political process as a means of ensuring accountability.

"It is", as the Commissioners state, "*for the people of the State to determine by whom they are to be represented and governed*". (Part 2, 1-9)

Consider, for example, the significance for citizenship and political activity in these recommendations of the Royal Commission:

- electoral reform,
- disclosure of political donations,
- the need to eliminate taxpayer-funded propaganda,
- the need for freedom of information.

It follows that, if representative democracy is to work properly, that information must be available, electoral processes must be fair, and public participation encouraged.

The Commissioners also observed that our system of government rests upon two principles - the *democratic principle* and the *trust principle*.

They said: "*The first affirms the people's right to determine their representatives and hence their government. The second establishes the public interest as the touchstone of public power. A fundamental premise of each is the public's capacity to make informed choices and to reach considered judgements.*"

Parliament as the Central Agent of Accountability

For the Royal Commissioners, their proposals relating to Parliament were central in that the Parliament "*is the public's representative forum and it derives its ultimate legitimacy from the public on whose behalf it acts*". (Part 2, 5.1.1)

The chapter dealing with Parliament is argued with great clarity and wisdom. The distinction is drawn between the Legislative Assembly (the House of Government and Opposition) and the Legislative Council (the House of Review).

It is then proposed that the Council be given a central role in reviewing and scrutinising the management and operations of the public sector. To this end it must gain the authority and legitimacy that can only come from electoral reform and the proper realisation of the principle of proportional representation. It is not enough that Parliament have the authority and legitimacy that comes from a fair electoral system. It is also important that it be structured to carry out its accountability duties effectively by way of:

- parliamentary committees,
- question time,
- Executive scrutiny generally.

It is my view that the status of Parliament in our community needs to be improved, as does the accountability of the Parliament to our community. To that end my Shadow Leader of the House has developed a package of reforms for the Legislative Assembly which will be placed before the majority party for consideration:

- Equal numbers of Government and non-Government members on key Legislative Assembly committees,
- The establishment of the right of reply to brief Ministerial statements,
- The restoration of Private Members' time to at least four and half hours per week,
- The extension of question time to 45 minutes,
- Televising of Parliament - in particular question time, and
- More parliamentary sitting days and less late night sittings.

Development of New Mechanisms of Accountability

With respect to Executive scrutiny, the Opposition is pleased to see the recommendations for greater independence for, and powers of, the independent agencies of Parliament including the:

- Auditor General
- Ombudsman
- Electoral Commission
- Commissioner for Public Sector Standards
- Commission for Investigating Corruption and Improper Conduct (CICIC). I support the establishment of CICIC.

Local councils such as Wanneroo, Stirling, Canning and Boddington have been subject to a range of controversial and, in some cases, incomplete, examinations. Indeed, Wanneroo Inc and the Wayde Smith Affair should have been dealt with by an independent CICIC.

It is absurd that Mr Smith's dubious financial affairs have been examined by a firm of accountants which has provided a secret report to the Premier.

The independence and integrity of the five agencies I have earlier listed must be guaranteed. The appropriate body to provide the guarantee is the Parliament itself, rather than the Executive, which is, after all, the subject of their attention.

And let it not be forgotten, that the Royal Commission saw more to accountability than the agencies that were exercising scrutiny and supervisory functions - it was also a question of how the Government related to its departments and statutory authorities, some of which operated in largely commercial terms.

Their report outlines in clear terms the conflict of interest that may occur, the terms and conditions of Ministerial involvement, and the responsibilities and liabilities of the various players. Little has been heard from the Government of the day about these matters.

I would advocate not only that we ought to embrace the Second Report of the Royal Commission but also that we ought to entrench its conclusions in our State Constitution and therefore in our political practices and institutions generally.

In 1992, in two landmark decisions, the High Court of Australia held that freedom of speech as to political matters was an implied right in the Commonwealth Constitution. Those decisions have been recently built on to significantly amend the law of defamation at least in relation to public figures.

In June of next year the High Court will be called upon to determine whether a measure of equality of voting power is a necessary incident of the form of representative government provided in the Commonwealth or State Constitutions.

The scope for extending our constitutionally-implied rights is quite significant:

Equality before the law, universal franchise, electoral equality, freedom of association and other rights contained in the International Covenant on Civil and Political Rights readily come to mind.

But each of these go to the rights of citizens to participate in the democratic process. The other dimension of representative government is the corresponding duties cast upon the elected representatives in their role as trustees for the people.

The Royal Commissioners' accountability package was very much about the duties of elected representatives as a necessary incident of representative democracy.

To give efficacy to representative government, both the rights of citizens and the duties of the elected representatives should be enshrined in the State's Constitution. The failure of the Parliament to legislate to protect the essential features of our constitutionally created representative democracy is to be regretted.

However, the High Court has placed the Parliament effectively on notice that it will move to fill the void left by the inactivity of the Parliament on this important issue.

A responsible Parliament should respond to the Royal Commission report and the growing activism of the High Court by asserting itself as the defender of the civil rights of its citizens, rather than abrogating this function to the courts.

The Labor Party does not see WA Inc and the Royal Commission recommendations as a passing fad in Western Australian politics. It is an opportunity to be seized in order to provide an excellent democracy for future generations. This is best achieved by entrenching these rights of citizens and duties of representatives in the State Constitution.

In this way we will ensure that the lessons of the Royal Commission are absorbed into the very heart of our system of government.

REINVENTING GOVERNMENT - THE VIEW FROM GOVERNMENT

HON PETER FOSS, MLC
(MINISTER FOR HEALTH, WESTERN AUSTRALIA)

The Premier apologises that he is unable for personal reasons to be with you today to participate in this forum. As a person who was on the other side of WA Inc for 10 years, the matters under discussion are ones about which he feels very strongly. He has asked me to stand in for him and speak on behalf of the Government.

I hope that I will be accepted as a suitable substitute because I entered Parliament at about the time that we were most in despair at the capacity of the system to deal with what we saw as its outright abuse and remained with it as the Parliament and the system started to strike back and expose the lies and deception that had gone on for years.

I participated in the Upper House moves to make the need for a Royal Commission undeniable and spoke frequently in that House about the principles of the Parliamentary system.

As a lawyer, I probably knew the theoretical side of the Constitution fairly well but membership of the House has given me the opportunity to see how the reality of it operates. I am eternally grateful for the opportunity to see how the unwritten parts of the Constitution operate - the natural balances and restraints.

For the first few years there were so many interesting constitutional happenings I almost felt as if it had been put on as an intellectual feast for me. It is this practical experience that I believe is essential for an understanding of the processes because our Constitution was invented and refined over centuries by its participants.

My intellectual and professional interest in Constitutional law was a useful preparation but about as real as a computer simulation is to actually flying a fighter plane. I have come out of the experience with a respect for its designers. I certainly believe that a wholesale reinventing is not justified but we should always be prepared in the light of immediate experience to continue the process of accretion that we make.

I will start my talk by referring to the extract from the Royal Commission report quoted on the registration brochure for this conference. It says in part:

'the present institutional arrangements for the conduct of Government cannot be relied upon either to ensure that Government will be conducted for the public's benefit or to provide reassurance to the public that it is being so conducted'

I will respond to this statement in four ways.

First, I point out again, as I have done in Parliament, that no administrative systems of Government can ever guarantee against improper conduct by public officials, in

which term I include ministers. If you want an honest Government, you have to elect one.

My second point is this: systems of government, to remain healthy, ought to be subject to continuous assessment, renewal and reaffirmation.

Thirdly, that the Constitutional guarantees are not confined to written laws but are most powerfully guaranteed by the unwritten rules of conduct that people see themselves to be bound by and there is no reason that these constitutional rules should be confined to the formal Parliamentary structures. I go further and say that they must be developed for and extend to the informal structures that are influential in today's Government - the parties.

Fourthly, it is important that there be a clear view as to the role of Government if you are to be able to judge whether what it is doing is for the public benefit.

It is the People not the System!

It is ludicrous to think that you can change the moral character of a person by the checks and balances that you put in the system. If a person is dishonest in their private and business dealings then it is hard to believe that they can suddenly change their character when dealing in matters of government.

Whilst not saying that it is beyond possibility it is certainly highly improbable. We have judges and juries that have told us that a former Premier and Deputy Premier were dishonest and those two people are now in jail.

In each case the offences of which they have been convicted were associated with their role in politics. That being the case it is not surprising to have a Royal Commission finding in part 2 as follows:

"Some Ministers elevated personal or party advantage over their constitutional obligation to act in the public interest. The decision to lend Government support to the rescue of Rothwells in October 1987 was principally that of Mr Burke as premier. Mr Burke's motives in supporting the rescue were not related solely to proper governmental concerns. They derived in part from his well-established relationship with Mr Connell, the chairman and major shareholder of Rothwells, and from his desire to preserve the standing of the Australian Labor Party in the eyes of those sections of the business community from which it had secured much financial support. Subsequently, Mr Dowding, as Premier, presided over a disastrous series of decisions designed to support Rothwells when it was or should have been clear to him and to those ministers closely involved that Rothwells was no longer a viable financial institution. This culminated in the decision to involve the Government, through WAGH, in the Kwinana petrochemical project as a means of removing the Government's contingent liability for certain of the debts of Rothwells. Electoral advantage was preferred to the public interest."

To a large extent the institutions of government have been used as an excuse for WA Inc, rather than the human frailties of the culprits who were assisted either knowingly or unwittingly by the Labor Party.

The community should stop making excuses for the WA Inc players by blaming the system. It is rather like blaming the Criminal Code law of theft if a person steals. It is like suggesting that we need a new law of theft. If a person steals it is because of their moral bankruptcy not because the police were not standing by all ready to enforce the law immediately.

Probably the most interesting result of the Royal Commission was that although the Labor Government tried to smear the former Coalition Governments, the Royal Commission investigated the North West Shelf Project - carried out under exactly the same Constitution and which was the largest single resource project ever carried out in the State- and it came out with a clean bill of health. In fact it was seen as a model as to how things should be done.

That the Opposition have never accepted their responsibility and the responsibility of individuals is made plain because they continue to attack this Project despite the clean bill of health and yet Mr McGinty has on his front bench a man who was found by the Royal Commission to have acted improperly. It is quite clear that Labor has learned nothing and forgotten everything. No system of law is perfect. Nor is it likely ever to attain perfection.

If we did attain perfect constitutional protection I doubt we would have a Government that could work. Many times in Opposition we were tempted to amend legislation to try to overcome problems and abuses that we saw coming from the Labor Government, but we usually refrained because we were of the view that you should generally write legislation on the assumption that the right thing will be done rather than the wrong. You are unlikely to hamper a dishonest Government but you will tie an honest one. It is like the saying "Locked doors only keep out honest men".

The whole point of Government is you put trust in a number of people to do a particular job. To be able to carry out that job they must have a degree of independence and freedom of action and capacity to act.

You rely upon their integrity to make certain that they don't abuse that trust. As I have said before if you want an honest Government you have to elect one. If public officials are determined to be corrupt they will find ways, regardless of legislative or administrative systems. All that such systems can do is make it harder for them to succeed and easier to catch.

Parliament is undoubtedly the primary safeguard for our systems of government. However, the probity of individual ministers and public sector employees is also of major importance.

I do not accept that the WA Inc disaster, which led to the Royal Commission, and is the underlying reason why we are all here at this conference today, had much to do with systems of government. It certainly was not caused by any particular weakness in our systems. Focussing attention on systems of government is dodging the issue. It was not weaknesses in our "institutional arrangements" which cost this state some \$1.5-2.0 billion dollars in wasted money - it was weakness in people.

I have heard it said that the political leaders of the 1980s did not realise what they were doing. They were too busy to pay attention to trivial matters such as expense accounts. Our systems of government, it is said, were deficient because they allowed the excesses of the 1980s, and the failure of probity on the part of key individuals to occur. Somehow, the "system" should have prevented all these personal failings and errors of judgement.

Sorry, but I don't buy this argument. What happened to our Government in the 1980s stemmed simply from an inability or unwillingness on the part of key individuals to judge right from wrong. It is profoundly disturbing to realise that political leaders and their senior advisers, through dishonesty, incompetence or indifference led us down the road to ruin. We all want to look up to our leaders. In a real sense, they represent the state as a whole, and hence all of us. We expect them to set high standards of personal behaviour, probity and public accountability.

These events have nothing to do with "institutional arrangements"!

It is not comfortable to talk about such events. It is more soothing and less disconcerting to talk about "institutional arrangements". It wasn't our political and business leaders who failed us - it was our system of government". I don't agree. It is a cop-out. It is intellectually dishonest.

These elements of our past are not a suitable prologue to anything. They are a sorry chapter, best ended but not forgotten. The lessons are simple. They have been

expressed in the ten commandments for quite some time. Some of those who ignored them are now convicted thieves, in gaol.

Government ministers in the 1980s also lied to Parliament. How can Parliament safeguard a system of government if its members tell lies to it?

If these remarks sound overly moralising, I apologise. My intention is not to preach. It is to correct what I see as a growing trend in our community to rationalise what happened in the 1980s.

I want to draw a sharp line between the role of individuals in these events from the function, capacity, intent and proper role of administrative systems of government. By placing too much emphasis on correcting real or perceived failings in our systems of government and denying the role played by individuals when placed in positions of power, we are risking a re-run of the very events we wish most passionately to avoid.

If the past is any sort of prologue to the future, it is this - we have seen the results of personal failures in standards. The key to future probity and accountability remains, as it has always, in the power of one.

Only daily adherence to high moral principle and attention to detail by public officials in their professional conduct can deliver good government all the time.

Renewal and re-affirmation of government

I'm not convinced that we should be focussing on "reinventing government". I am suspicious that the real agenda is reinventing history. The term "reinventing government" has a ring of anarchy about it. It suggests that our present systems of government are hopeless; that we need to tear them down and start again. I don't believe this is true.

I think our system of government in Western Australia is basically sound. After all, it dealt effectively with WA Inc in the end.

Two things really struck me about the WA Inc years: the first before I entered Parliament, the second after.

For a number of years the WA Inc deals were exposed in Parliament however, members of the Labor Party chose to ignore or not to believe these revelations. The media almost to the very end did little to publicise them. The reason I entered Parliament was, because, in common with most other people up and down the Terrace, you could see that the touted successes of the Labor Government were nonsense. Anybody with an ounce of financial sense was able to see that the figures didn't add up.

Snippets of information that became available put the lie to what the Government were saying. As lawyers we used to sit around saying "*why doesn't somebody do something about it*". We used to read the Eastern States newspapers which highlighted what was happening here. We could not see the same thing on the front pages of our newspaper.

We sat there aghast while *The West Australian* sent Brian Burke off to Ireland with a resounding editorial character reference and thoroughly endorsed Peter Dowding in the 1989 election.

As the result of saying "*Why doesn't somebody do something about it*" somebody came to me and asked me to enter Parliament and "*do something about it*".

Entering Parliament the thing that most struck me was the total lack of knowledge of the constitutional background of what we are doing amongst the members of

Government, I confess to having given a number of speeches that were essentially lessons on constitutional law prompted by remarks that indicated to me quite clearly that the Labor Members of Parliament considered their sole role was the role of the 'Ruler of the Queen's Navee' always to vote at their party's call.

We used to give speeches outlining the facts of WA Inc - the facts that were later confirmed by the Royal Commission - that were certainly delivered squarely to the members of the then Government. Apparently few of them ever questioned it in the party room. They objected to us querying anything that they did on the basis that the legislation they were putting through was the Government's legislation. Our role was merely to go along with them and endorse it. They refused to be accountable in regard to how they spent their money.

They objected when as was traditional for any Parliament we asked the Government to account for the last lot of money before we gave them any more. They had no idea why we had annual appropriations. Their sole interest was numbers. That is why I say that we have to continually renew and reaffirm our constitution.

In each case it became obvious to me that each citizen and each Member of Parliament has a role in ensuring the enforcement of our Constitution. For this they need to know what it is and to understand it.

When the system operates smoothly for a long period of time you often forget the reasons behind what you are doing. When you pass through a torrid period you understand and have the experience stencilled on your mind. Ask any person who went through the Depression what they think about borrowing heavily. Ask any person who went through the Polio epidemic why we have polio vaccine.

Obviously there have to be better ways to renew and revitalise our Constitutional watchfulness than having a WA Inc but it is something we need to do. We need some form of "booster shot" to our immunity to Constitutional corruption.

Our Constitution has grown up over a long period of time. It does make sense, but only makes sense, if you understand the historical context and don't treat what is being done in Parliament as being merely a ritual without meaning and purpose. We need to know and understand not only the written part of our constitution, but also the unwritten parts which are in some ways more powerful than those which are written down. This really takes me to my third point- unwritten rules and their extensions to all aspect of government including the informal ones

It is quite clear that the unwritten rules of the constitution can be more powerful than the written ones. The Upper House has the power to reject Supply, but by rules imposed upon itself it has never done so in this State. The subtle interaction of what you are legally allowed to do and what the written constitution allows you to do is extremely powerful.

I believe one of the other faults of WA inc. was the disregarding by the Burke Dowding and Lawrence Governments of these unwritten rules of the constitution. It is for this reason that my Government believes in and has firmly reinstated the collective responsibility of Cabinet.

This is probably the most important unwritten rule.. Our premier has emphasised that we are collectively responsible and we do not leave the cabinet room until everybody has fully discussed, understood and accepted a decision. We don't believe it is unreasonable to impose collective responsibility. As a partner in a legal firm I had collective responsibility with my partners and all my employees scattered across Australia and the world, - anyone of who could cause me to lose my house and my wealth by their negligent act.

I do not query the fact that I was responsible for their actions but I can tell you it had a salutary effect on care that we took.

We took great interest, in how they carried on their business and it was very important to me that the proper principles were in place. I believe that the people can reasonably look to Cabinet to take a similar interest in the propriety of their colleague's actions rather than do a Pontius Pilate job as the Labor Cabinets certainly did.

Another way in which the Cabinet process was subverted was that the responsibility of Ministers was taken away completely by the central Premier and Cabinet office. This was even used to by pass ministers.

The Burke Government with the influence of Kevin Edwards was legendary. He even claimed that he was the real premier of Western Australia and the Lawrence Government, with Marcelle Anderson had a similar arrangement. How can you have a responsible Government when you bypass the processes in this way?

Another way in which the Parliament was subverted was the Labor Party was dominated by a small inner clique of Cabinet. It's vote determined the vote of Cabinet. Cabinet then voted as one in the caucus room and dominated that. The caucus then voted as one in the Parliament. A small number of people was able to dominate the entire proceedings.

This is in marked contrast with how it is done under a Liberal National party Coalition Government. It is accepted that having made our decision in the cabinet room we will speak and vote the same way as one. For that reason, in the Party room only the Minister in charge of a piece of business and the Premier are able to speak in the party room. Then when it comes to the vote, only the backbench can vote. This ensures that the Cabinet has to be able to persuade at least half of the remainder of the backbench to agree with them.

It is said that the party system has subverted democracy. In fact the democratic systems have their effect in the party room for it is there that the members respond to their electorate.

It is certainly true that the Executive can dominate Parliament, but acknowledging that to be the case it is all the more important that we extend the Constitutional processes to the informal processes. I believe that we have done this in our party, but the ALP not only has not but also has strict disciplinary rules that prevent any independence in Parliament. We allow a conscience vote on any matter where you believe that your electorate or conscience do not allow you follow the party line.

Of course, theoretically you may lose your endorsement later, but experience has shown that the selection committees allow their immediate heat to cool and by the time you come up for preselection they have forgiven you. Unless you really go overboard they won't hold your conscience vote against you. I say that with some personal experience.

People if they are to be brave they need to have structures to be brave. In the current world it is outside the floor of the House that you need those structures. That is not to say that these structures outside Parliament should only be informal. That is why we moved at once to enact the Public Sector Management Act. This act strengthens the role of chief executive officers of agencies and codifies their relationship with ministers.

This relationship is crucial. It must be clear that the minister is ultimately responsible to the Parliament and people for the conduct of his or her portfolio, but it is equally necessary to make clear the responsibilities of chief executives. Much more rests on the shoulders of both ministers and their CEOs in modern Government. The stakes are higher and the pace is faster. This means the collateral damage can be greater if standards of performance, probity and accountability are not maintained.

The custom that the political background of a civil servant is to be ignored had in the past preserved the independence of the Public Service. Under Labor this changed

markedly. I can remember at my first opening of Parliament in 1989, I was talking to an old friend who happened to be a CEO. After a short time he said "I hope you don't mind, I can't be seen talking to you - the Government will think that I am passing you secrets".

That shows you the paranoia that existed under the political persecution that happened under Labor. I believe that we have effectively changed that by a different attitude and that CEOs feel free to talk to the now Opposition - I have certainly encouraged this. In addition, in the Public Sector Management Act we have recognised that modern politics needs some political advice and we have given them an acknowledged place so that they are distinguished from the permanent public servants. I believe this formal change will support the informal processes.

Defining the role of Government

This brings me to my final point. The Royal Commission extract I quoted at the beginning implies more than just probity and improper behaviour. Conducting government for the public's benefit also means delivering the services people want from the public sector, efficiently and effectively. I said the services people want. Is there any limitation on this? I believe that there is. WA Inc troubles came mainly from the Government getting involved in activities where it is hard to see why Government ought to have been involved at all. It is not only that they did this improperly - it was fraught with the possibility of going wrong from the beginning.

This is especially so where it put the Government in an arena where it has an obligation to regulate. I believe we have to ask: "What is the core business of government"? What things should the Government be doing and what areas should it stay out of?

Government has the responsibility to deliver services of a public character, which would either not be delivered at all by the free market or which the market would supply inadequately to meet social standards expected by the community. While the Government has the responsibility to deliver such services, this does not mean it has to do the job itself with its own staff. It has to ensure that people have access to the services they need. It can purchase services on behalf of recipients from a variety of providers.

Again, the Government moved quickly to address these fundamental issues. We set up the Independent Commission to Review Public Sector Finances, the so-called McCarrey Commission. It identified a host of long-overdue reforms in most public sector agencies. We followed up on this immediately by establishing a special sub-committee of cabinet to work with ministers and their chief executives to sheath home the reforms, try to do even better than McCarrey recommended and capture the financial and efficiency benefits from the reforms. I think this process, and its outcomes, ought to be a major part of what the Royal Commissioners meant when they talked about "conducting government for the public's benefit".

It has been said that state Governments were forced to dabble in entrepreneurial activities during the 1980s because the Commonwealth Government was squeezing their finances and their tax bases were diminishing. Both were, and are, true but this did not mean that we had to invest in a PICL project. A better approach would have been to confront the real problem - that is the unacceptable fiscal imbalance which besets all state Governments in Australia and the Government in Canberra which perpetuates it. That is where the problem and solution lie, not in blundering around in projects of dubious worth, which should have been left to the private sector, if anyone.

It has also been said that, in a certain sense, we are all responsible for WA Inc. It was said to be part of the excesses of the 1980s, which we all either shared in or condoned.

I reject this argument. Most businesses, big and small, and most ordinary hardworking Western Australians, simply stuck to their guns and got on with the job. They were not diverted by get-rich-quick schemes and insider deals with Governments.

The WA Inc excesses grew from greed and a thirst for power by politicians who saw nothing wrong with deploying the whole machinery of Government for their own ends. They used the Government to intervene in markets instead of confining it to its proper roles of facilitator and regulator. In doing so, they undermined the one great force which has powered the economic and social progress we have seen in the free world. I speak, of course, of competition.

By favouring mates and trying to pick winners they distorted the beneficial role that markets play in our state development. Certainly we all have a role to play in keeping the institutional arrangements working - but you cannot hold people responsible for the wrongs any more than you can hold policemen, rather than thieves responsible for theft. As I said earlier, "institutional arrangements" will not protect the people against such behaviour.

We have been criticised by the opposition and the media for watering down the terms of reference for the commission on Government and for delaying its creation.

As to the first point, we do not resile from placing the emphasis right where it belongs - on preventing corrupt, illegal and improper conduct. The Royal Commission was about detecting it, the Commission on Government is about preventing it.

In saying this I accept that the Commission on Government has, and ought to have, a much wider brief than preventing corruption. I do not accept that the Commission's ambit is restricted. The commission has complete freedom and scope to address its terms of reference in full and the issues which were the underlying reason for its creation.

On the second point - the matter of delay - I will say this. The Government was elected on a set of promises. We told the electorate what our priorities were and what we would do in office. Well, we are in office and we are doing what we said we would. More importantly, we have in place the principal informal arrangements that are necessary to overcome the excesses of the 80s and we are honest.

The Premier made it clear in his second reading speech for the Commission bill that the Government would not wait for the Commission's report before taking action. We have, and will make administrative changes, introduce efficiency measures, withdraw from activities which are not the business of government and enact legislation for essential reforms.

Let us put things in perspective. During the latter half of Labor's term in office the business of government was stalled. There was a hung Parliament and it was frequently prorogued early. We came into office facing a considerable backlog of reforms and suggestions for legislative improvements. Frustrated departments and agencies had been sitting on some of these for years. This backlog was the result of a Government unwilling, and later unable, to act. We are dealing with the backlog with due diligence and vigour.

We cannot and should not stand still. The state has to move on. The reforms which the Commission will recommend should be seen as a part, indeed an important part, of a continuing process of change, reform and improvement. The Commission is part of a process of evolution.

With the end of the cold war, we are moving rapidly into an era of a one-world economy, perhaps distorted to some extent by trading blocs. To survive and prosper, Western Australia must become competitive in our key international

markets. This means both our private and public sectors must achieve efficiency standards comparable with the best international bench marks.

If the mistakes of the past spur us to achieve this objective for the public sector we may yet gain something lasting and positive out of the ashes of WA inc.

COMMISSION EXCLUSIVE: THE MEDIA, POPULAR CULTURE AND THE ROYAL COMMISSION

ALAN CARPENTER
(Edited Transcript)

I did spend a great deal of time at the Royal Commission, far too much time for my liking. I didn't particularly like it, it was very interesting, but it wasn't particularly enjoyable. Professionally, it was an experience that I will never forget. I had a unique perspective of it in many ways, as I wasn't inclined to rush back to work and type up stories. I was there as a critic and I could take my time and take things in. I was in a position to analyse things, not only said about the politicians, but also the businessmen in the witness box.

It irritates me more than a little bit to be in a position two years after the Royal Commission reports have come down - without wanting to take a political side-where we don't even have disclosure legislation. To me it is mind boggling that I could have gone right through the Royal Commission hearing all about political donations and the influence that they apparently applied to political thinking and yet we are still in a position where we have people arguing that political disclosure is not necessary. Four or five years ago, I would have argued the same thing. I was forced to change my mind and I find it hard to believe that other people haven't.

I also listened with great interest to what Peter Foss had to say about electing honest politicians. The problem is we need a system which allows us to detect who is honest and who isn't, and if you have a system which does not allow this then you have the kinds of problems exemplified by the findings of the Royal Commission and the hearings of the Royal Commission. You cannot simply rely, as we have learnt, on the word of a politician that he is acting not only honestly, but also in the best interests of the state - he even might think that he is. But we need a system, to which what ever extent possible, guarantees that the actions and the words of the politicians who represent us are honest.

Anyway, for those of you who have been here for a long time today, all day, you would start to get an idea of what it was like to sit at the Royal Commission. Only this is much more interesting - sorry Michael. Even Michael would admit that it got a bit tedious and when I was reluctantly casting my mind back to those unfortunate days that I spent there on the 13th floor listening to the evidence of the Royal Commission, I flipped through a magazine - the Weekend Australian magazine. Coincidentally, a couple of weeks ago, there was an article about people who make their living from public speaking. According to the article, U.S. research showed that at any one time in a given speech only 12% of the audience is listening- I don't know which 12% is listening now- 20% of the audience is thinking about sex- although I went through Peter Foss' entire speech without thinking about sex once until I got to the end and then I thought to myself I haven't been thinking about sex for more than half an hour - something's wrong, 20% were reminiscing about days of old - I do a bit of that when people are speaking, other people were thinking about

children at home and problems they have got and so on. But only 12% at any one time are listening.

Given your experience here today, can you imagine how many people were really taking it in at the Royal Commission after about six months? It was a very long and very difficult process to go through and being asked to make a political remark about the way it was reported is a very dangerous thing for a journalist to have to do. Because I know from first hand experience, journalists (and I'm not too sure about the other professions) hate criticism with a passion and hate being criticised. They love other people being criticised and love criticising other people and they especially love it when other journalists are criticised. That's why people will sit and watch Stuart Littlemore, that pious git, vehemently criticising every other journalist in Australia. But as soon as he turns the light onto them as he did to me, his face changes. Journalists don't like criticism and they are not particularly prone to self criticism either, or self analysis in general, however there are exceptions.

But in all truth, and I mean the way in which the Royal Commission was conducted and reported, there were a lot of areas where journalistically coverage fell short of the desired mark. I was guilty of it as much as anyone else. The ABC was guilty of it, although we tried not to be. Generally, I think the ABC and *The West Australian* - (now that they have left I can tell the truth about them) were fairly rigorous, fairly honest in their assessment of what was going on, and fairly comprehensive in their research. I can't say the same for everyone else, which is unfortunate.

But to understand why this situation arose, its necessary to understand the time in which the Royal Commission was held, just as it would have been perhaps more desirable if there had been more of an effort by the Royal Commission to understand the context in which some of the events they were investigating had taken place. I am not offering any excuses, but hindsight is a wonderful thing.

When I look back now on the journalistic coverage of the Royal Commission, I can see that there were major faults which I saw at the time, but which I understand better now. For a start there was an underlying anger in the community, which is still there, a residual anger about the events of the 1980's. There was a bewilderment and there was a confusion about what had been happening. Journalists felt that to some extent as well. Many journalists felt as has been expressed today, and has in the past by various outlets, that they had been less than rigorous in their scrutiny of government in the 1980's. They were also aware that there was a perception in the population that journalists had failed in the 1980's and to whatever extent this was true, journalists felt a sort of a pressure on them. When they got to the Royal Commission, they were determined to get it right. So there were these two background levels of activity, background crackle to the Royal Commission. One was the community anger about what had happened and some anger towards journalists about the way they had let the community down, and also there was the journalistic perception that they had somehow been deficient and were determined to make up for it.

Now the Royal Commission itself when it started was completely different to what everybody had been expecting. People had been expecting a boring tedious exploration of detail going on ad infinitum without much news value. But instead, what we got from day one on the address on the Fremantle Gas and Coke deal was an explosion with Brian Martin - I don't know how many of you recall him or know him, but he is a very compelling figure with a great sense of court room drama, which I am sure he has honed in his career as prosecutor in South Australia. It was said of him at the time that the softest thing about Martin was his teeth, and he wasn't a very soft fellow, he was very thorough and he was very effective. So all of a sudden we had this compelling figure telling us that a puppet theatre in Fremantle had been the recipient of a \$125,000 donation, contemporaneously with the sealing of the Fremantle Gas and Coke deal between Goldberg, Connell and Parker. People were amazed that such a thing had happened. Almost immediately after that we heard about \$200,000 being handed over, \$300,000 being handed over, large

amounts of cash being trolleyed up the terrace in suitcases- it was a mind blowing way to start the Royal Commission for journalists.

All of a sudden, media outlets threw all these resources at it, including the ABC. The Royal Commission, as far as stories go, was the only thing going and people who were in government at the time would know that government became a total irrelevance as far as trying to get some space in the media - no one was much interested in anything else. People were talking about it all over Perth, it was pretty rare for an event like that, especially a political event to capture the imagination, but it did. The unfolding story of the Royal Commission developed a bit like a soap opera, and this is where to some extent the ABC shares some blame- because we started re-enacting events. What else could we do? There was obviously an almost frenzied level of interest in what was going on. The Royal Commissioners in their wisdom had determined that actual footage of people under cross examination could not be used as it could be used unfairly. I think I understand the logic of this, but in this case the logic was flawed. If the idea was to give witnesses a better chance of getting fair treatment at the end, it was a fate accompli to my way of thinking.

We ended up with I think mainly amateur actors acting out parts which were given to them after someone had sprinted down St George's Terrace and thrust a piece of paper in their hand and there was a "Yes, Mr Burke". There was no lasting harm done, but then again it probably wasn't fair on some of the participants. Dallas Dempster's lawyer collared me in the lobby of the Royal Commission once and complained that we had been playing Dallas Dempster wearing ghastly ties, which Dallas Dempster wouldn't be seen dead in. It might be creating an unfair impression of him in public.

Now if you remember I used to do these comments on these re-enactments like some football critic with Liam Bartlett. He and I would be sitting there and we would play the re-enactment and then make some comment about what had been said, this was our attempt at analysis. We did our best. Anyway, one particular day, Multiplex boss John Roberts turned up at the Royal Commission for the first time, so we decided to re-enact Mr Robert's evidence. We went through Actors Equity. They provided us with a 'Roberts'. Bartlett and I were in the make-up room getting made up, watching the monitor as the re-enactment was being done (because we taped it). He looks alright, I thought and Bartlett, Yeh he looks good, until he began to speak.

"Well I did, ye know what I did was, I thought to meself, what, I'll give em money what".

We had to tape it, our comment piece, six times before Liam could stop laughing. I swear to God it happened.

Then there was the Royal Commission itself, which some of you would be more familiar with. The Royal Commission hearings were on the 13th floor of the National Mutual building. The hearing rooms, there were three of them, were quite small and a bit like the Barbican Theatre complex in London, there was always more than one entertainment for people to look at, and it was entertaining. I have never seen an event comparable to the Royal Commission where people have come to follow politics like they did, everybody it seemed wanted to have a look at what was going on. I attribute this, and I think that this is a good thing, to the power of television, especially commercial television which I am a product of and which I am critical of as well.

In this case, commercial television brought to people's lounge rooms, every night, a whole list of politicians, businessmen and generally undesirable types that people had felt uncomfortable with. Suddenly, somehow these people were being brought to book in a public way. I think people felt good about that and a lot of people wanted to go and watch and a lot of people did go and watch. If you had sold tickets, you would have made a fortune. The Royal Commission might have paid for

itself by selling tickets for the public to watch. If you are prepared to pay, you can go, a way if you like, of paying for our freedom of information.

There were many more people than could ever fit into the hearing rooms. You would get up to the 13th floor lift and get out, but you could hardly walk because there was so many people. They could not fit into the hearing rooms, they were all standing out in the lobby, hoping to catch a glimpse of Brian Burke under pressure, or someone like that. So the Royal Commission set up a television monitor with public seating on the 13th floor, that was not enough, so they set up another monitor downstairs on the 12th floor for more public, and still there was an overflow on the 12th floor. The Commission gendarmes ferreted people around from one level to another. As vacancies became available upstairs - they would shuffle a group up. You would have pension groups there, people with name tags, boy scouts in uniform, John Samuel. There was a lady who used to sit there knitting, and my French history isn't too good, but I think it was Madame Lafarge.

I took note of the woman knitting and to me it actually represented something important, because the people who used to go to watch the executions at the Royal Commission went for a reason I think, and they went there because they wanted to see their grievance or their unhappiness being addressed by public execution. It is not the same sort of mentality that applied to most people who went along to the Royal Commission, I do not want to belittle them because I knew a lot of them. But people wanted to see for their own eyes that politicians and businessmen were being forced to answer questions. As I said people went to politics and much of the credit for that, if credit is due, I think goes to some extent to *The West Australian* newspaper. But it is largely from television that people get their immediate perception of what is going on. They see it and think, Christ, what has happened, and are prepared to go and have a look. I think that is a good thing.

Journalists were provided with a workroom at the Royal Commission which was on the 12th floor, one floor below where all the action was. To facilitate the working arrangements for the journalists, the Royal Commissioners' very kindly provided a television monitor in that room so that, in theory, whilst journalists were there busy on the phone and typing their stories they would not miss anything. The reality was most journalists ended up sitting in the room all day watching what was happening on the monitor some of the time. The monitor would be droning away in the background, journalists would be in there talking and chatting, making coffee, asking if John Samuel was still outside, so in case he was, they would stay in.

In the end I think it had a rather unfortunate consequence. Those of you who are familiar with the radio Triple J would know about Roy and HG and how they call the football. They do not go to the football, it is much more fun to sit and watch it on television and that is what they do, sit and watch it on the television and keep a running commentary going. That is exactly what happened at the Royal Commission, there was a running commentary.

What this led to I believe, was what I unfortunately would term 'manufactured consent', and I think it is the term that Noam Chomsky uses when he denigrates the way media works in the United States, but he talks about vertical consent, from the top down. Here you had the bottom strata of media life coming to consent about what they were seeing on the Commission video. It does not mean that everybody at the Royal Commission, or the journalists at the Royal Commission were doing nothing, there were the genuine hard working ones and I am not including myself in any of this because I was there just as an observer. I didn't work in the work room, I did most of the work upstairs and then went back to work and just spied off the top of my head. But working in the 12th floor workroom you had journalists from ABC Radio with their computer screens in front of them busy listening with headphones to what was happening and typing up their stories, journalists from *The West Australian* newspaper were there with computer screens, typing up their stories and a lot of other journalists looking over their shoulders seeing what was being written.

A situation which should have allowed for up to twenty independent viewpoints or analyses of what was happening in the end registered one. There was hardly any dissent from what the group thought of the events of the day. At the time I was very angry about that and I thought that it was a terrible breach of journalistic responsibility. I am not angry about it any more and in a way I understand why it happens, its normal. You people would be doing it, if you were watching me downstairs on a monitor, you would not be sitting here like this, you would be talking and every now and again you would be making remarks about what I had said, you would come to some sort of understanding with each other about what you thought, that is what happened. Some journalists are worse than others, anybody who is any journalist would tell you about a colleague who regularly went shopping for much of the day and would ask when she came back "What's happened?" People would tell her, she would do her story and that was it.

One journalist got what he thought was a scoop because he shared a lift with Brian Burke and Burke had passed on some trivial but interesting bit of information which nobody else had, so he went back to his computer which had a printer on it and typed it up. He typed it up and sat there thinking about what he had written, half an hour later he decided it was time to record his voice, went over to the voice studio and there was someone in there with exactly the same piece of information. Doug had to wait outside until this fellow came out and asked- "*How did you get that? I was the only one in the lift with him.*" He said "*Mate, I read it on your script as it popped off the printer.*" This particular guy covered the Royal Commission by learning how to read upside down.

I will just speak briefly about hearsay evidence, which I think was a very unfortunate, but I understand a necessary part of the Royal Commission. Hearsay evidence was particularly damaging to David Parker I thought, with hindsight now nobody would care probably. But there was one particular case quite early on in the proceedings where a fellow from Rothwell's called David Hurly was being cross-examined by Brian Martin and Hurly passed on information that he had heard somewhere that Parker had received a \$50,000 bribe. There was never any substantiation to it and it was going to be some time before Parker himself appeared to defend himself. I don't know if you remember it or not but the story of the night and the story in the paper the next day was "Parker in \$50,000 bribe claim", I mean what chance did he have after that? The next day brought evidence that he had walked into the Real Estate Agents in Fremantle and paid a \$13,000 cash deposit on his house- you put two and two together and come up with Parker's in trouble. This is one of the unfortunate aspects of the Royal Commission, however I understand that it must happen, but nonetheless it can be very damaging. Who is to blame ultimately?

Most journalists certainly made no attempt to put any of that sort of evidence into context. Now at the beginning of the Royal Commission, there were people who were prepared to be critical. I sought them out because I thought the whole situation needed some balancing. Richard Utting was one, he was always good for a bit of criticism. But I think that there was a requirement at that stage to balance up proceedings because the Royal Commission was charging through people like a mad bull and journalists were being swept along with it. There was a sense of having failed, there was a sense of what the community expected and there were all these people at the Commission themselves and that creates an impact too. If you all believe fervently in one point of view, I would find it very difficult to stand up here and argue against it. These sort of things do not happen conscientiously, but subconsciously, you get swept along in certain directions and that is what happened at the Royal Commission in the beginning.

So I found a couple of people, I got someone from the Law Society, but I can't remember the name because they change their faces every year. Someone I can remember is Utting who made criticisms, and tried to put things into perspective, which nobody in the journalism trade in WA was doing. Unfortunately even our effort was token. There was a critical lack of journalistic analysis in Western Australia, not only at the time of the Royal Commission but all the time, it was one of

the fundamental weaknesses of journalism in this State and we all suffer from it. If you read the *Sydney Morning Herald* and *The Age* regularly and then you look at *The West Australian*, you see that it provides good simple coverage of events but it doesn't go into a great deal of depth and I think that the media coverage of the Royal Commission exemplified this weakness. There was nobody putting anything into perspective. It may well have been and probably was the fact that the community didn't want it anyway. What the community wanted was what the journalists wanted, good stories and to see people up there answering questions, and if they weren't going to answer questions they were in trouble. I think that is what the community wanted, sometimes you have to provide things that people don't necessarily want.

Sir Ronald Wilson was at a lunch one day and I managed to stand up and ask him a question about whether or not the Royal Commission was being fair. Wilson is a very wise person and as you get older I suppose you accumulate experience and he has probably seen a couple of Royal Commissions come and go (or similar proceedings). He said that the thing you have to bear in mind as the overwhelming imperative is the community's right to know what happened. I was still not necessarily totally supportive, but now I see that he was completely right. The community has got a right to know, that is what the second Royal Commission Report is all about.

The Royal Commission - Part I and the events of the Royal Commission taught us a valuable lesson that the community must know. The politicians who suffered most at the hands of the Royal Commission- and there was some who suffered a great deal and have suffered greatly since- probably have only got themselves to blame. Some people were unfairly dealt with on the way through, but they should not blame the Royal Commission and they should not blame the media, they should blame the people who got them into the pickle in the first place.

The other thing that needs to be borne in mind now, is that the manufacture of consent which I did think happened and I was very critical of at the time, I now see as probably having been not only an inevitable outcome, but a good one. The Royal Commission and the reportage of the Royal Commission provided people with the knowledge that they were crying out for. There may be a time when more analysis will be done and slightly different viewpoints come to fore about the events that the Royal Commission investigated, but I think that the Royal Commission succeeded in its primary aim, and so did the media even though it failed at various points along the way, the outcome was I think good. People were satisfied and a very valuable function had been performed. I don't believe any grave injustice had been done, there had been some minor injustices to people and some of them still feel hurt about it. They will get over it, or perhaps they won't.

Beyond the more immediate gratification that the Royal Commission proceedings and the reportage of it provided to the community of Western Australia, something far more important emerged I think, something which should be of enduring value to the community. This was the second report of the Royal Commission, which could not have been borne without the first Report and which would not exist without the activities that the Commission investigated. It was like a breath of fresh air when I picked up the second report after dealing for so long with everything that had been wrong, to finally see okay there is a way maybe through it that we can put in place to prevent it or alleviate the likelihood of it happening again.

That's the value of the second Royal Commission report, everyone else has spoken about this so you don't want to hear it from me. In terms of the media, I believe great credit should be given to *The West Australian* newspaper for pursuing this point, the importance of the Royal Commission's second report. *The West Australian*, for all its faults, has been relentless in trying to point out to the people of this State the opportunity provided by the second report and why the current government must pursue it. I believe that the newspaper should be supported and I congratulate it. It should be supported by the rest of the media in this State and by the community, particularly the community which took such an interest in the Royal Commission.

WESTERN AUSTRALIA

**REPORT OF THE
ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES
OF GOVERNMENT AND OTHER MATTERS**

PART I VOLUME 1 1992

**Commission terms of reference
(EXTRACT)**

On 19 November 1990, the Premier, Hon Carmen Lawrence MLA, announced the intention of her Government to appoint a Royal Commission to inquire into certain matters. On 8 January 1991 His Excellency the Governor approved the issue of the following Commission:

To:

*The Honourable Mr Justice Geoffrey Alexander Kennedy;
The Honourable Sir Ronald Darling Wilson Ac Kbe Cmg Qc; And
The Honourable Peter Frederick Brinsden Qc:*

By this Commission issued with the advice and consent of the Executive Council, I, the Governor—

(1) Appoint you to be a Royal Commission to inquire and report as follows:

1. To inquire whether there has been—

- (a) corruption;
- (b) illegal conduct; or
- (c) improper conduct,

by any person or corporation in the affairs, investment decisions and business dealings of the Government of Western Australia or its agencies, instrumentalities and corporations in respect of the matters referred to in Schedule 1, and to report whether—

- (d) any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings; or
- (e) changes in the law of the State, or in administrative or decision making procedures, are necessary or desirable in the public interest.

Schedule 1

1.1 The matters referred to under the headings 'WA State Government Funding of Rothwells following October 1987 Stock Market crash', 'Share Trading by the SGIC and the GESB in Rothwells and Paragon shares' and 'SGIC trading in Bell Group shares' in the annexures to Chapter 11 of Part I of the 'Report of Inspector on a Special Investigation into Rothwells Ltd' by M J McCusker QC.

1.2 The purchase by the State Government Insurance Commission of shares in the Broken Hill Proprietary Company Limited from interests associated with the late Robert Holmes a Court.

1.3 The Kwinana petrochemical project.

1.4 Central City property transactions entered into from 1984 onwards by the Western Australian Development Corporation, the Government Employees Superannuation Board (formerly the Superannuation Board) and the State Government Insurance Commission (formerly the State Government Insurance Office).

1.5 Government Employees Superannuation Board (formerly the Superannuation Board) involvement in the Fremantle Anchorage and Halls Head developments.

1.6 The acquisition of Northern Mining Corporation NL in 1983.

1.7 The purchase of the Fremantle Gas and Coke Company by the State Energy Commission of Western Australia in 1986.

1.8 The sale of the Midland Abattoir site in 1986.

1.9 Financial assistance by Government to Bunbury Foods Limited.

1.10 The natural gas sales agreements entered into by the State Energy Commission of Western Australia for the purchase of natural gas from the North West Shelf Joint Venturers and the contracts relating to the Dampier to Perth natural gas pipeline project.

1.11 The Burswood Island Casino.

1.12 The Teachers Credit Society and the Swan Building Society.

2. To inquire whether there has been —

- (a) corruption;
- (b) illegal conduct; or
- (c) improper conduct,

by any person or corporation in respect of the matters referred to in Schedule 2 which in your view warrant further investigation after present police inquiries are completed, and

To report whether —

- (d) any matter should be referred to an appropriate authority with a view to the institution of criminal proceedings; or

(e) changes in the law of the State, or in administrative or decision making procedures, are necessary or desirable in the public interest.

Schedule 2

2.1 Allegations of bribery with respect to planning decisions of the City of Stirling for Observation City.

2.2 Other allegations arising from the trial of Robert Mark Smith and Robert Paul Martin held in The District Court of Western Australia before His Honour Judge Keall and a jury in October 1990, including those with respect to surveillance activities.

2.3 The adequacy of the police investigation of the matters referred to in items 2.1 and 2.2 of this Schedule;

(2) Declare that without limiting the powers otherwise available to you –

(a) in conducting the inquiry you are to seek to avoid prejudice to pending or prospective criminal or civil proceedings and to the interests of the State in pending or prospective civil proceedings in such manner as you think fit and, in particular, by taking evidence or otherwise proceeding in private, precluding the publication of evidence, or deferring the taking of evidence, where you consider any such course to be appropriate;

(b) you may, during the course of the inquiry, refer any matter to the Solicitor General or another appropriate authority with a view to the institution of criminal proceedings, where you consider that delaying such action to the completion of your report would be undesirable;

(3) Declare that you are to report within 12 months of the issue of this commission and that you may publish interim reports;

(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;

(5) Declare, without derogating from the powers which you otherwise have, that you may, whether simultaneously or at different times, act separately to take evidence or otherwise conduct the inquiry

WESTERN AUSTRALIA

REPORT OF THE ROYAL COMMISSION INTO COMMERCIAL ACTIVITIES OF GOVERNMENT AND OTHER MATTERS PART II 1992

LIST OF RECOMMENDATIONS

A list of the recommendations made by the Commission in this part of its report, appears below. The recommendations should be read in the context of the sections of the report in which they appear.

Chapter 2 Open Government

Recommendation 1

Freedom of Information legislation be enacted in this State as a matter of priority. (Paragraph 2. 2. 3)

Recommendation 2

The Freedom of Information Bill be amended, so that:

(a) persons may require the correction of their personal records held by agencies;

(b) when an agency is not itself in possession of a document but either knows another agency holds the document or has reasonable grounds to believe it holds the document, the agency is obliged to transfer the request and to inform the applicant;

(c) where an agency is in possession of the only copy of a document which is not a document of the agency, it is obliged to transfer the FOI request in accordance with clause 15(2) of the Bill, together with a copy of the document and to inform the applicant; and

(d) the Information Commissioner is obliged to publish reasons for decision in an appropriate form so that the public is adequately informed of the basis of all decisions made under the legislation by the Information Commissioner. (Paragraph 2.2.5)

Recommendation 3

An Administrative Decisions (Reasons) Act be enacted as a matter of urgency in accordance with the 1986 Report of the Law Reform Commission of Western Australia in Project No 26 Part II. (Paragraph 2.2.10)

Recommendation 4

The Commission on Government review the secrecy laws of this State, both statutory and common law, as they apply to information possessed by government, its officials and agencies. (Paragraph 2.3.9)

Recommendation 5

Section 58C of the Financial Administration and Audit Act 1985 be amended so that:

(a) the minister is obliged to notify both the Parliament and the Auditor General in writing of any action that has been taken or obligation incurred to which section 58C is relevant, and the reasons why it is reasonable and appropriate that the provision of information to Parliament is to be prevented or inhibited to the extent that this is the case; and

(b) notwithstanding any secrecy undertaking or claim, the Auditor General is entitled, as of right, to access to that information to the extent that, in the opinion of the Auditor General, it is or could be relevant to the discharge of his or her audit responsibilities. (Paragraph 2. 5. 20)

Recommendation 6

(a) The recommendations of the Auditor General contained in the 1991 Report on the Management of Guarantees, Indemnities and Sureties be given urgent attention by the Government.

(b) Steps be taken to ensure that Treasury is informed by all agencies of government of the giving of any guarantees and indemnities pursuant to legislative powers as soon as possible after they have been given.

(c) The Treasurer should be responsible for the giving of all guarantees, indemnities and "sureties" responsibility for which, by law, is not vested in another public official.

(d) Guarantees, indemnities and "sureties" in respect of matters of significance should require Cabinet approval.

(e) The Treasurer or other minister or public official responsible for the giving of any guarantee or indemnity, and the Treasurer in the case of a "surety", should notify Parliament and the Auditor General of its nature, full extent and purpose as soon as practicable following its being given. (Paragraph 2. 6. 8)

Recommendation 7

The Commission on Government inquire into the organisation, role and functions of press secretaries and of the Government Media Office. (Paragraph 2. 7. 6)

Chapter 3 Accountability

Recommendation 8

The recommendations contained in the Reports of the Law Reform Commission of Western Australia in Project No 26, Part I and Part II, be implemented forthwith, subject to the observations in paragraph 3.5.2 of chapter 3 concerning the establishment of an Administrative Appeals Tribunal. (Paragraph 3. 4. 8)

Recommendation 9

All public sector bodies, programmes and activities involving any use of public resources, be the subject of audit by the Auditor General. (Paragraph 3.10. 7)

Recommendation 10

- (a) The office of the Auditor General be constituted by a separate Audit Act.
- (b) The Auditor General be appointed for a period of up to 10 years, rather than to the age of 65 as the Financial Administration and Audit Act 1985 currently provides.
- (c) The Auditor General report directly to Parliament.
- (d) A Joint Parliamentary Committee be responsible for the overseeing of the Auditor General.
- (e) The Parliament exercise a direct role in the selection of the person to be the Auditor General.
- (f) The Parliament, with the advice of the Joint Parliamentary Committee, be responsible for recommending to the Treasurer the appropriate budget for the office. (Paragraph 3.10.12)

Recommendation 11

The legislation governing the functions of the Auditor General provide the office with the power to call for such cabinet documents as may be necessary for the purpose of the exercise of the functions of the office of Auditor General. (Paragraph 3.10.15)

Recommendation 12

- (a) The legislation governing the functions of the Auditor General provide the office with all necessary powers to call for information and the production of documents, and to compel the appearance of persons, as may be necessary for the purpose of exercising all such functions. (Paragraph 3. 10.17)
- (b) A public servant should not be appointed to the board of a statutory authority or State-owned company while retaining a position in the Public Service in a department within any portfolio of the minister responsible for that body. (Paragraph 3.14.13)

Recommendation 17

Legislation provide that:

(a) members of all boards of authorities and State-owned companies be required to conform to the same standards of probity and integrity as expected of persons occupying positions of trust; and

(b) members of all boards of authorities and State-owned companies responsible for any business activity be required to exercise reasonable care and diligence in the exercise of their powers. (Paragraph 3.14.17)

Recommendation 18

All existing and future State-owned or controlled bodies be subject both to the audit of the Auditor General and to the provisions of the Financial Administration and Audit Act 1985. (Paragraph 3.14.19)

Recommendation 19

A State-owned Companies Act be enacted which will apply to all companies currently owned, or subsequently created or acquired, by the government or a statutory authority except when, in the case of a particular company, specific legislation is enacted governing the conduct of its affairs and its accountability. (Paragraph 3.14.22)

Chapter 4 Integrity in Government

Recommendation 20

(a) A separate and independent archives authority be established, acting under its own legislation.

(b) The Commission on Government inquire into the terms of the legislation. (Paragraph 4.3. 6)

Recommendation 21

The Government review the criminal law for the purpose of assessing its adequacy in proscribing conduct in public office for which criminal sanctions should be available. (Paragraph 4.5.5)

Recommendation 28

The Commission on Government review the electoral system for representation in the Legislative Council. (Paragraph 5. 3. 11)

Recommendation 29

The Commission on Government review the electoral system for representation in the Legislative Assembly. (Paragraph 5. 3. 16)

Recommendation 30

The Commission on Government inquire into the means best suited to be adopted by the Parliament to bring the entire public sector under its scrutiny and review. In this, particular regard should be had –

- (a) to the use of parliamentary committees for the purpose;
- (b) to question time; and
- (c) to the manner in which the departments and agencies of government should be required to report to the Parliament. (Paragraph 5.4. 4)

Recommendation 31

- (a) The Auditor General, the Ombudsman, the Electoral Commissioner and the proposed Commissioner for Public Sector Standards and Commissioner for the Investigation of Corrupt and Improper Conduct be designated independent parliamentary agencies in the legislation establishing their respective offices.
- (b) Appropriate legislative arrangements be made for the participation of the Parliament, ordinarily through its committee system, in the processes leading to the nomination of a person for appointment to each of these offices.
- (c) Each of these officials be removable from office only on the address of both Houses of Parliament.
- (d) In the case of each office, a parliamentary committee be responsible for recommending to the Treasurer the appropriate budget for the office.
- (e) Each officer be required to report annually to the Parliament and, in addition, to report from time to time to the appropriate parliamentary committee. (Paragraph 5.5. 6)

Recommendation 32

The Commission on Government, as part of the review of parliamentary committees, consider the role of committees on legislation, including the accommodation of the right of the public to make representations on legislative measures referred to such committees. (Paragraph 5. 7.8)

Recommendation 33

The Commission on Government examine the Parliamentary Privileges Act 1891 with a view to permitting proceedings in Parliament to be questioned in a court or like place while preserving the principle of free speech in Parliament. (Paragraph 5.8.8)

Recommendation 34

- (a) If the Electoral Amendment (Political Finance) Bill is still before the Parliament, it be amended in the light of the Commission's detailed proposals set out in Appendix 3.
- (b) If the Parliament does not enact the Electoral Amendment (Political Finance) Bill, or enacts the Bill without taking into account the Commission's detailed proposals set out in Appendix 3, then the Commission on Government inquire into the disclosure of political donations and contributions.
- (c) In any event, the Commission on Government inquire into –

(i) the disclosure of electoral expenditure; and

(ii) such other measures relating to political finance as may enhance the integrity of the system of representative government. (Paragraph 5.9.14)

Recommendation 35

All government instrumentalities, agencies and corporations, as part of their annual reports, be required to disclose all expenditure on -

(a) advertising agencies;

(b) market research organisations;

(c) polling organisations;

(d) direct mail organisations;

(e) direct postal or other direct communications to electors or to householders;

(f) public relations organisations; and

(g) media advertising organisations,

and the persons or organisations to whom these amounts were paid. Disclosure should not be required if the aggregate expenditure of any relevant body does not exceed \$1,000. The Auditor General should monitor compliance with this requirement. (Paragraph 5.9.17)

Recommendation 36

The Commission on Government inquire into –

(a) the desirability of regulating government advertising during an election period; and

(b) the desirability of regulating travel by persons in or connected with the government during an election period. (Paragraph 5.9.22)

Chapter 6 The Administrative System

Recommendation 37

(a) The Government give consideration to the introduction of a Public Sector Management Act.

(b) A Commissioner for Public Sector Standards be established whose jurisdiction extends to all the departments and agencies of government. (Paragraph 6.2.8)

Recommendation 38

The Government review the Public Service Act 1978, whether as part of the Government's consideration of the enactment of a Public Sector Management Act, or, if that course is not to be pursued, on its own account. (Paragraph 6.3.11)

Recommendation 39

(a) The financial provision made for ministerial staff be the subject of separate parliamentary appropriation.

(b) The employment arrangements for ministerial staff be the subject of special legislation and monitored by the Commissioner for Public Sector Standards (or the Public Service Commissioner, if the former office is not created).

(c) The manner in which ministerial staff are to deal with the officers of departments and agencies, other than with the chief executive officer, be made the subject of clear and explicit procedures. (Paragraph 6.4.11)

Chapter 7 Commission on Government

Recommendation 40

A Commission on Government be established in accordance with the requirements set out in paragraph 7.3.1 of chapter 7. (Paragraph 7.3.2)