



Parliamentary Commission of Inquiry

Presiding Member : The Hon. Sir George Lush
Members : The Hon. Sir Richard Blackburn, OBE
The Hon. Andrew Wells, QC

G.P.O. Box 5218
Sydney, N.S.W. 2001
Telephone: 232-4922

September 1986

Senator the Hon. Douglas McClelland
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear Mr President

I have the honour to present herewith the Report of the Commission appointed pursuant to the Parliamentary Commission of Inquiry Act 1986.

Your attention is respectfully directed to paragraph 4.1, which refers to the vexed question of the disposal of the Commission's documents.

Yours sincerely

Sir George Lush
Presiding Member

Encl



Parliamentary Commission of Inquiry

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G.P.O. Box 5218
Sydney, N.S.W. 2001
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September 1986

The Hon. Joan Child MP
Speaker of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Madam Speaker

I have the honour to present herewith the Report of the Commission appointed pursuant to the Parliamentary Commission of Inquiry Act 1986.

Your attention is respectfully directed to paragraph 4.1, which refers to the vexed question of the disposal of the Commission's documents.

Yours sincerely

[Redacted signature]

Sir George Lush
Presiding Member

Encl



Parliamentary Commission of Inquiry

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PARLIAMENTARY COMMISSION OF INQUIRY ACT 1986

Report pursuant to Section 8

1. Introduction

1.1 The Parliamentary Commission of Inquiry was constituted by the Parliamentary Commission of Inquiry Act 1986 ("the Act"), which received Royal Assent on 13 May 1986.

1.2 Pursuant to section 4 of the Act, Commissioners and a Presiding Member were appointed by the necessary resolutions. The appointments were completed on 27 May 1986.

2. Action taken by the Commission

2.1 The members of the Commission first met on 28 May 1986 in Melbourne, for the purpose of initiating steps for the administration of the Commission.

2.

- 2.2 The first formal sitting of the Commission took place in Sydney on 3 June 1986. The Commission took and expressed the view that the performance of the duties imposed on it by section 5 required the examination of the materials made available to it by the Act, and such other material as it might receive, for the purpose of deciding whether those materials contained references to the Honourable Lionel Keith Murphy (the Judge) which were capable of being formulated as "specific allegations made in precise terms". It also took and expressed the view that it should carry out further investigations if it appeared possible that such investigations would give precision or support to the suggestions or accusations made in those references.
- 2.3 Accordingly, the Commission published an advertisement relating to its activities (Appendix I) and embarked on the work of collecting and examining materials, carrying out further investigations and where appropriate, formulating allegations which emerged from the materials and investigations. This work was done by counsel assisting the Commission and staff members under their direction. Some problems arising in the course of it were referred to the Presiding Member.
- 2.4 On 23 and 24 June the Commission sat to hear substantial argument on the appropriateness of the course which it was following. The Commission however adhered to the interpretation of its duties which it had previously expressed. Counsel for the Judge then indicated that they wished to consider a Court challenge to the constitutionality of the Commission's Act and the correctness of the Commission's interpretation of it.

3.

- 2.5 In fact a writ was issued out of the High Court, and an application was made to that Court on 26 June 1986 for an interlocutory injunction restraining the Commission from pursuing the course which it was following. The injunction sought was refused. The Court gave the case priority of hearing, fixing the hearing date as 6 August 1986.
- 2.6 By 17 July 1986 12 documents each purporting to contain a specific allegation within the meaning of section 5 had been delivered to the Judge's legal advisers. Two more such documents were subsequently delivered. On that day the Commission sat to hear argument concerning some of these documents, and concerning the future conduct of proceedings. It was decided that the Commission would hear argument and rule upon the constitutional meaning of the word "misbehaviour" in section 72 of the Commonwealth of Australia Constitution. At this date it was hoped that the hearing of evidence would begin on approximately 28 July 1986.
- 2.7 On 22, 23 and 24 July 1986 the Commission heard argument on the construction of section 72. It reserved its decision. The proposed hearing of 28 July 1986 was by agreement deferred. On 31 July 1986 the Commission sat and heard submissions on a request on behalf of the Judge for the issue of a large number of summonses to witnesses.

- 2.8 By 31 July 1986 the Commission had been informed by the Judge's legal advisers that the High Court proceedings would not be prosecuted. The Commission was also aware of media reports concerning the Judge's health, but no information on this subject had been given to it by those acting for the Judge. Because the Commission might in these circumstances have been thought to be acting inappropriately, a meeting on 4 August 1986 was arranged between the Presiding Officers and the Presiding Member. At this meeting, the possibility of the making of a Special Report, after a sitting of the Commission on the following day, was considered.
- 2.9 At the sitting on 5 August 1986, counsel for the Judge tendered a medical certificate relating to the Judge's health. The Commission adjourned further sittings until 19 August 1986 on which date Parliament was scheduled to sit. Also, on 5 August 1986, it announced the result of its consideration of section 72, but not its reasons. On the same day, the Commission sent its first Special Report to the Presiding Officers, setting out its views on the effect of the Judge's illness on the Commission's proceedings.
- 2.10 On 19 August 1986 the Commission handed down the reasons of the three members for the already announced conclusion on the meaning of section 72. It was then known that the Repeal Bill would go before the House of Representatives on 20 August 1986; in these circumstances the Commission adjourned all further proceedings sine die.
- 2.11 On the same day, a second Special Report, with the reasons for the decision on section 72 attached, was sent to the Presiding Officers.

- 2.12 In fact the Repeal Bill was not passed in that week of sitting; but since the issue in Parliament was not the repeal of the Act but the disposal of the Commission's documents, and since nothing which was both fair and useful could be done in time for the Report which section 8 of the Act requires to be delivered before 30 September 1986, the Commission has not revoked its last adjournment order.
- 2.13 It will be appreciated from the above that the Commission has, up to the present date, heard no evidence whatsoever concerning the conduct of the Judge.
- 2.14 This account explains why the statutory report must take the form which now follows.

3. Report Pursuant to Section 8 of the Act

- 3.1 The Commission accordingly reports:
- (a) that it has made no findings of fact;
 - (b) that it has therefore formed no conclusions or opinions whether any conduct of the Judge has been such as to amount to proved misbehaviour within the meaning of section 72 of the Constitution.
- 3.2 Having regard to the nature of this report, the Commission submits no record pursuant to sub-section 8(3) of the Act.
- 3.3 For the same reasons, the Commission submits no separate report pursuant to sub-section 8(5) of the Act.

4. Administrative Matters

4.1 The Commission considers that the general disposal of documents generated by the Commission is, in the absence of any statutory direction, a matter for the Presiding Officers to determine. The Commission's powers do not enable it to give directions itself, except for the limited purposes of section 34. These documents include documents relating to the allegations which were the subject of the 14 documents already referred to in paragraph 2.6 and one further such document which was prepared but not delivered. They also include documents relating to allegations which counsel assisting the Commission considered to be unsupported by admissible evidence within the meaning of sub-section 6(2) of the Act and relating to matters the consideration of which by counsel had not been completed.

4.2 The members of the Commission wish to record that they have been singularly well advised and served by both counsel and the legal officers assisting the Commission and the Secretary and other members of the Commission's staff (see Appendix II)

September 1986

.....
Presiding Member

.....
Commissioner

.....
Commissioner



Parliamentary Commission of Inquiry

Presiding Member : The Hon. Sir George Lush
Members : The Hon. Sir Richard Blackburn, OBE
The Hon. Andrew Wells, QC

G.P.O. Box 5218
Sydney, N.S.W. 2001
Telephone: 232-4922

9 September 1986

Mr John Spender, QC, MP
Federal Shadow Attorney-General
Suite 601, 6th Floor
83 Mount Street
NORTH SYDNEY NSW 2060

Dear Mr Spender,

In the course of our telephone conversation yesterday you raised with me three questions arising out of a newspaper article published in The National Times on Sunday, 7 September 1986. You sought information relating to that part of the newspaper article which asserted that 'part of the information given to the investigation about Saffron included a sensitive reference to a highly placed member of the Federal Government.'

I have taken up the matter of your questions with the Presiding Member of the Commission and I am directed to inform you as follows.

The legislation which set up the Commission provides for its inquiry to be conducted in private, unless the Commission thinks the circumstances require otherwise. That legislation continues to be in force. There is debate in the Parliament at present concerning the disposal of documents of the Commission including documents containing information received by the Commission. Taking these matters into account with other relevant matters, the Commission does not consider that the circumstances require it to depart from the requirement of privacy imposed by its statute, except to the extent allowed by section 34 of that statute.

In light of the above I am unable to provide you with answers to the questions that you raised.

Yours sincerely,

[Redacted signature]

J.F. Thomson
Secretary

Note Copies FAXed to
? Brazil (AG's)
J Simons (Sinos)
J. Spender

*Including 2 stages of Commission inquiry to interp. by Court
Crown
Ad.*



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9 September 1986


The Hon. Michael J. Young, MP
Special Minister of State
Parliament House
CANBERRA ACT 2600

Dear Minister,

The Presiding Member of the Commission, the Honourable Sir George Lush, has requested that I inform you that questions have been received by the Commission from Mr John Spender, QC, MP, relating to information received by the Commission in the course of its inquiry. I am enclosing for your information a copy of my letter of today's date to Mr Spender.

The Presiding Member requests that, should you dissent from the approach taken by the Commission and reflected in the enclosed letter, you might please arrange to let me know in the first instance so that I can communicate your views to him.

Yours sincerely,


J.F. Thomson
Secretary

Note Copies faxed
to P. Brazil (Ari's)
J. Simons (Smed)



Parliamentary Commission of Inquiry

Presiding Member : The Hon. Sir George Lush
Members : The Hon. Sir Richard Blackburn, OBE
The Hon. Andrew Wells, QC

G.P.O. Box 5218
Sydney, N.S.W. 2001
Telephone: 232-4922

10 September 1986

Mr John Spender, QC, MP
Suite 601, 6th Floor
83 Mount Street
NORTH SYDNEY NSW 2060

Dear Mr Spender,

I have received your communication dated 8 September and transmitted to me by facsimile. I have had the opportunity of discussing the matter with the Presiding Member of the Commission, the Honourable Sir George Lush and, consistently with that discussion, I make the following observations in relation to your communication.

With respect to the matters set out under the heading 'As to section 34' the position is as follows.

Material in the possession of the Commission was not 'analysed' for the purpose of possible communication to other persons and agencies specified in section 34 of the Commission's statute.

The Commission is not called upon by its statute to do such analysis. However, the question generally was addressed by Counsel Assisting the Commission and the Instructing Solicitor though naturally not in the same depth as would have been the case had the Commission gone to finality. On an overview of the material available, much of which came from the National Crime Authority, the Director of Public Prosecutions or the Australian Federal Police, analysis was not warranted, in the opinion of Senior Counsel. A good deal of the material is inchoate and, in that form, unsuitable for reference pursuant to section 34. Generally, to be suitable for that purpose such material would need to be enhanced by further investigation and/or cross-examination of witnesses. However, when it became apparent that the Commission was to be wound up by the Parliament, it consulted the National Crime Authority over materials in its possession that the Authority might require. Those requested by the Authority were provided to it.

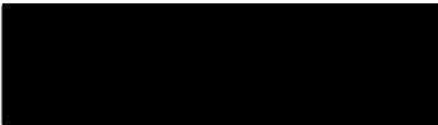
*Note: Referred for comment before
despatch to David Durack,
Andrew Doherty and Daryl Smeaton.
All agreed this correctly reflects the
position in relation to the aspects of the Commission's winding up. F.T. 10/19*

I confirm what you have set out in your communication under the heading 'Receipt and Disbursement of Information' except that the material proposed to be sent to the Parliament under the repeal Bill (as presently formulated) will not include:

- . files received from departments and authorities;
- . material provided to the Commission in confidence on the basis that it would be returned;
- . Senate Committee material;
- . Counsel's personal working notes which, I understand, have been destroyed; and
- . administrative files.

However, relevant information from the material described immediately above is contained in the Commission's records, which, it is proposed, will be sent to the Parliament.

Yours sincerely,



J.F. Thomson
Secretary

FILE NOTE:

DISCUSSION WITH JOHN SPENDER MP

Mr Spender telephoned today (3 September) in response to Mr Thomson's call to him on 29 August providing answers to questions raised by Mr Spender. He was seeking clarification of those answers.

I told Mr Spender that I could not be much clearer than Mr Thomson had been and that the answers given were what the Commission had decided upon after consultations with and advice from the Attorney and his Department. He was initially miffed because we had sought advice from the Attorney who "is only another MP in this matter." He accepted my explanation that the Commission felt it proper to consult but that the answers were its own.

Mr Spender then asked whether we could be more specific about information provided under s.34. I informed him that we were not able to be specific to which he responded that our Act's secrecy provision probably prevented that. He then withdrew that until I pointed out s.14(10) which is clear on publication of information to which s.34 might apply.

His second query related to analysis of information. I informed him that little analysis of the kind he was referring to had been done because the primary function of the Commission as set out in the Act related to the Judge. In any event time prevented such analysis although this may have been undertaken had the Inquiry proceeded. He seemed happy with that answer.

His final question related to relevant information and counsel's personal notes. I merely reiterated our previous answer that relevant information and copies from these sources, as well as others, are in the records of the Commission.


Daryl P Smeaton

FILE NOTE

Approximately 10.15 am

28 August 1986

D. Durack called John Spender Q.C. - Shadow Attorney-General (call made in response to J Spender's call to Commissioner and S. Charles Q.C. 27 August 1986).

Note: Call to J Spender made after consultation with Mr Pat Brazil and Mr Robert Musacks of Attorney-General's and the Secretary of the Commission.

J Spender requested information on winding-up of Commission (he asked to be given the same briefing as the Commission gave the Government - this was not responded to).

D Durack advised J Spender of the following:

As to winding-up Parliament appears to be ad idem on question of winding-up and repeal of Parliamentary Commission of Inquiry Act 1986;

Commission will remain until Parliament says otherwise;

Counsel have left save for consultation in winding-up process;

Some staff will remain till Parliament determine alternative course;

Commission files will go in safe to Presiding Officers after assent;

All material (save administration files) will go to Presiding Officers;

Returned documents to Law Enforcement Agencies and other people. Documents left for posterity are those generated and copies in some cases of documents provided to us.

J Spender requested information as to which agencies had provided information and which informants had given information to the Commission.

D Durack advised that he could not give this information as it was confidential to the Commission. J Spender then requested information on 3 specific matters:

1. Which agencies have looked at or were given opportunity of looking at documents?
2. Has an analysis been done of all Commission material with a view to providing information to law enforcement agencies re the possible commission of offences? (section 34 of the PC of I Act).
3. Is the record going to Parliament a full record of documents before the Commission.

-2-

D Durack advised J Spender he could not answer these questions without first consulting with the Secretary of the Commission - after said consultation Mr Spender would again be contacted.



28 August 1936

John Spender 20/8



1. Q. Which agencies have looked at or were given the opportunity of looking at documents?

A. The NCA, upon their request (see Senate Hansard P 271) - other agencies e.g. DPP, AFP or NSWPF (see answer to question 2).

2. Q. Has analysis been done of all Commission material of s.34 - with view to providing info to them?

A. The Commission is not called upon by its statute to do such an analysis. This question generally has been addressed by Counsel Assisting and Solicitor Instructing, though not in the same depth as if the Commission had gone to finality. On the material available, much of which came from NCA or DPP, analysis was not warranted, in the opinion of Senior Counsel. However, a decision was made to communicate some specific information to the NCA (can't say what that is).

3. Q. Is the record going to Parliament a full record?

A. Full record of everything generated with the Commission.
However does not include -

- all files returned to departments and authorities
- all material provided on a confidential basis
- counsel's personal notes
- Senate material

Note

Handwritten version faxed to P Brazil.

This proposed revision to 3A is shown opposite (communicated by him by phone to D Smeyers)

21/8

Alternative suggested by Pat Brazil.

A. Full record of everything generated within the Commission although the following have been returned

- files received from departments and authorities
- all material provided to the Commission in confidence on the basis that it would be returned.
- counsel's personal notes
- Senate Committee material

✓OK

Relevant information and copies from the above would, however, be in the records of the Commission.

2956A

Note: spoke Gregory Bantock, PS. to Spender in form of above. He queried posn on Counsel's h/written notes. I said to extent they had crystallised & had been set down as memoranda, they were going to Parliament; to extent they were "scrappy notes," they had been, I understand, destroyed. He will pass on to Spender who will ring in

if he needs further info

20/8

FILE NOTE

John Spender's office rang to speak to D Durack (Instructing Solicitor) - not available - rang back and requested to speak to Senior Counsel (number given).

S Charles rang and advised John Spender had contacted him and wanted to know what was happening re winding-up of the Commission - with documents etc - law enforcement agencies etc. - S Charles advised Spender he would get instructions and get back to him (or someone would contact him on No's



S Charles also advised D Durack that he had spoken to Pat Brazil who had indicated that he saw no problem in giving some information to Spender but would check with the Attorney-General first (referred S Charles to what had been said in Hansard and document sent to Fergus Thomson by R Mueke re what Commission was doing with documents, etc.)

D Durack rang Pat Brazil.

D Durack spoke with Pat Brazil who indicated that Commission could speak to Spender after briefing by R Mueke (Attorney-General had O.K.'d this). - was really a matter of confirming that what was in Hansard was what Commission was doing.

. Pat Brazil advised D Durack that R Mueke would ring and would also provide Commission with relevant Hansard extracts/

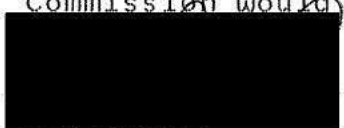
. Pat Brazil suggested D Durack advise Sir George Lush of these matters and clear communication with Spender with him.

. D Durack rang Sir George and advised as above and he agreed with Spender being contacted as outlined above. (Sir George does not want fact that Commission is winding-up hidden in any way).

NOTE: Sir George advised he had not received letter sent by F Thomson on 26 August 1986.

. R Mueke contacted D Durack and advised Hansard documents would be vocadexed on morning of 28 August 1986.

. Cindy Willis rang Spender's office and advised that Commission would be in contact with him on 28 Augusts 1986.



D N Durack

27 August 1986.

Desack

before mid day
9 Sep

FACSIMILE TRANSMISSION

FOR:

MR F. THOMPSON
SECRETARY,
PARLIAMENTARY COMMISSION OF INQUIRY

Fax no.: [REDACTED]

FROM:

~~OFFICE OF~~ ^{ln} John Spender Q.C., M.P.,
Federal Shadow Attorney-General,
Suite 601, 6th Floor,
83 Mount Street,
NORTH SYDNEY N.S.W. 2060

Fax no.: [REDACTED]

THIS TRANSMISSION CONTAINS 3 PAGES (including this cover page)

IF THIS TRANSMISSION IS FAULTY, PLEASE TELEPHONE [REDACTED]
or [REDACTED]. Our machine is open to receive 24 hours.

DATE: 8 SEPTEMBER 1986

MESSAGE:

ATTENTION: Mr F. Thompson
Secretary
Parliamentary Commission of Inquiry

As to section 34

A full analysis and ordering of all material for the purposes of section 34 did not take place for the following reasons:

- first, the primary function of the Commission was to examine matters relevant to and for the purposes of the section 72 question;
- second, the Commission's functions under section 34 were secondary or subordinate functions (albeit important ones);
- third, because of the relatively short time the Commission was in existence and the absence of an opportunity to cross-examine witnesses.

An extension of time for cross-examination of witnesses and for full examination of material would have been required for the purposes of complete discharge of all functions the Commission had under section 34.

Some material was provided to the National Crime Authority. No material was provided to other law enforcement agencies. Senior counsel assisting the Commission advised that, except for the material provided to the N.C.A. for the purposes of section 34, the remaining material was in an inchoate and unordered state and not suitable for reference pursuant to section 34, since it was not in final form. While there were leads, indications and intimations that might have lead to references under section 34, such material needed to be ordered, and enhanced, by further investigations and by cross-examination of witnesses.]

Receipt and Disbursement of Information

The Commission received a considerable bulk of information from various agencies, particularly the N.C.A. and the D.P.P., together with files from various departments and documents or statements from individuals or organisations. When requested to do so, material has been returned to source. In the case of documents returned to the N.C.A. and the D.P.P., and other agencies and Government Departments, some/all (indicate which) has been copied and will be provided to Parliament under the Repeal Bill. Material to be sent to Parliament will not include:

DD.
Remaining material had not been looked at for purpose of sending on to LPA's / persons of material supplied we would not ask them to exercise discretion under s. 34

A

✓

11

- . Some statements or documents from individuals or organisations outside of Government, which individuals or organisations cannot be publicly identified;
- . Counsel's working notes, which have been destroyed.

e Administration files

Confirmation

Please confirm:

1. The accuracy of the above;
2. That the information set out above is all that, on your instructions, you are able to provide within the terms of the Act regulating the Commission.

*File from depts + authorities
mat. provided in conf. or
basis it would be returned*



ATTORNEY-GENERAL'S DEPARTMENT

SECRETARY'S OFFICE

TEL: 71 9000

ROBERT GARRAN OFFICES
NATIONAL CIRCUIT
BARTON A.C.T. 2600

FACSIMILE NO: (062) 73 1137

TO: *Fergus Thomson*
.....
FROM: *Ad. Brazil*
.....
DATE: *12/9/86*
TIME: *1639*
NO OF PAGES
TO FOLLOW: *2*
MESSAGE:
.....
.....
.....
.....

55/86 12 September 1986

MEDIA

RELEASE

I. M. Spender, QC

Shadow

Attorney-General

062 72-7061

02 929-2969

Murphy Commission: Incomplete Examination of Material

Following discussions with the Secretary to the Parliamentary Commission of Inquiry into Mr. Justice Murphy, I communicated with the Secretary for the purposes of getting an agreed record on two vital issues. First, section 34 investigations (which section deals with the communication of material relevant to possible criminal offences). Second, the receipt and disbursement of material by the Commission.

I attach a copy of my communication of 8 September. I also attach the Secretary's reply of 10 September, in which he sets out the Commission's position on those issues. I entirely accept what he says in his reply.

The following points of importance emerge from the Secretary's letter.

First, the Commission's view of its role under section 34 was that it was not required to conduct an analysis of material in its possession for the purposes of communication to the persons and agencies specified in section 34 of the Commission's statute (namely, persons and agencies responsible for enforcement and prosecution of criminal offences under Commonwealth, State and Territory laws).

Second, while the question of the Commission's role under section 34 was generally addressed, it was not done in the same depth as would have been the case "had the Commission gone to finality". Of the material in the hands of the Commission, a good deal "is inchoate and, in that form, unsuitable for reference pursuant to section 34. Generally, to be suitable for that purpose such material would need to be enhanced by further investigation and/or cross-examination of witnesses."

Third, it seems clear that because of the terms of the Commission's statute (and the repeal Bill) it will be impossible to know in any detailed sense what happened so far as the National Crime Authority is concerned - a body which, in any event, is constrained by the terms of its charter as to the kind of criminal offences it may examine.

Fourth, the material which will be sent to Parliament will not include all of the material that came into the hands of the Commission. In particular, material provided to the Commission on a confidential basis - from whom or from what organisation we

Handwritten notes:
I don't know
On proposed
reference
to GA
appears
in by Parliament

are not allowed to know - apparently has been returned to source. It is impossible to say what reference to this kind of material will be contained in the records of the Commission which are to be sent to Parliament.

Sixth, effectively the body of material gathered into the hands of the Commission from various sources will be dissipated. Some of the material - counsel's personal working notes - has been destroyed. It will cease to exist as a concentrated body of material in the hands of one single investigative body.

Nothing said here, or elsewhere, is intended as a criticism of the Commission, or those assisting it. Quite the contrary: they must operate within the constraints of the Commission's statute and are to be commended for undertaking the difficult task Parliament gave to them.

But the necessary consequence of the Government's intentions, and of the repeal Bill, is that a detailed and exhaustive investigation of the whole of the material that came to the Commission for the purpose of determining whether further information exists which may be evidence of the commission of criminal offences, or which may lead to the uncovering of evidence relating to the commission of criminal offences, will never take place.

The Opposition's view is that public interest requires that such an examination must take place.

Sydney, 12 September 1986

Thankless Gregory Burton [REDACTED]

see final para by letter

The Hon A Wells, QC

Dear Judge

I spoke with Sir George Lush this morning. He asked that I send to you the enclosed copy draft report which has been prepared by him to cover two contingencies: first, that the Commission's Act is not repealed and, second, that no extension of time to report is given by the Parliament. The draft has been brought forward early because, you will recall, of Sir George's projected visit to the West.

One matter in particular has been raised by Sir George for consideration by you. It is the question whether the report should make reference to the allegations other than those 14 allegations adverted to in the reasons for judgment on the meaning of misbehaviour. Those other allegations include 21 not drawn (and not to be drawn) as specific allegations in precise terms, one further allegation so drawn but not delivered, two in respect of which no decision had been made, and three which had been subsumed into another allegation (total: 41).

If you would care to give some consideration to that question, I shall contact you by telephone tomorrow night (Tuesday 2 September) or, if unable to contact you then, on Wednesday 3 September, to discuss the matter with you. Would you consider also please the possibility of a meeting in Melbourne on Thursday 4 September at the Customs House, principally for the purpose of considering the draft report and, also, if necessary, the question of adverting to the other allegations in any report. The meeting will only take place if you consider it desirable to do so.

Meantime, I can be contacted if necessary on telephone [redacted] in Canberra on Tuesday night and thereafter. Mr Smeaton, who will sign this letter in my absence, can be contacted in Sydney all this week on [redacted]

Yours sincerely

[redacted]
(J F Thomson)
Secretary
1 September 1986

Sir Richard Blackburn
[REDACTED]

Dear Sir Richard

I spoke with Sir George Lush this morning. He asked that I send to you the enclosed copy draft report which has been prepared by him to cover two contingencies: first, that the Commission's Act is not repealed and, second, that no extension of time to report is given by the Parliament. The draft has been brought forward early because, you will recall, of Sir George's projected visit to the West.

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Yours sincerely

(J F Thomson)
Secretary
1 September 1986

SECRET

PARLIAMENTARY COMMISSION OF INQUIRY
Report to the President of the Senate

1. Introduction

1.1 The Parliamentary Commission of Inquiry was constituted by the Parliamentary Commission of Inquiry Act 1986, which received Royal Assent on 13 May 1986.

1.2 Pursuant to section 4 of the Act, Commissioners and a Presiding Member were appointed by the necessary resolutions. The appointments were completed on 27 May

2. Action taken by the Commission

2.1 The members of the Commission first met on 28 May in Melbourne, for the purpose of initiating steps for the administration of the Commission.

2.2 The first formal sitting of the commission took place in Sydney on 3 June. The Commission took and expressed the view that the performance of the duties imposed on it by S.5 required the examination of the materials made available to it by the Act, and such other material as it might receive, for the purpose of deciding whether those materials contained references to the Honourable Lionel Keith Murphy (the Judge) which were capable of being formulated as "specific allegations made in precise terms." It also took and expressed the view that it should carry out further investigations if it appeared possible that such investigations would give precision or support to the suggestions or accusations made in those references.

2.3 Accordingly, the Commission published an advertisement relating to its activities (Appendix 1) and embarked on the work of collecting and examining materials, carrying out further investigations and where appropriate formulating allegations which emerged from the materials and investigations. This work was predominantly done by counsel assisting the Commission and staff members under their direction. Some problems arising in the course of it were referred to the Presiding Member.

2.4 On 23 and 24 June the Commission sat to hear substantial argument on the appropriateness of the course which it was following. The Commission however adhered to the interpretation of its duties which it had previously expressed. Counsel for the Judge then indicated that they wished to consider a Court challenge to the constitutionality of the Commission's Act and the correctness of the Commission's interpretation of it.

2.5 In fact a writ was issued out of the High Court, and an application was made to that Court on 26 June for an interlocutory injunction restraining the Commission from pursuing the course which it was following. The injunction sought was refused. The Court gave the case priority of hearing, fixing the hearing date as 6 August.

2.6 By 17 July twelve documents each purporting to contain a specific allegation within the meaning of S.5 had been delivered to the Judge's legal advisers. On that day the Commission sat to hear argument concerning some of these documents, and concerning the future conduct of proceedings. It was decided that the Commission would hear argument and rule upon the constitutional meaning of the word misbehaviour in S.72 of the Commonwealth of Australia Constitution. At this date it was hoped that the hearing of evidence would begin on approximately 28 July.

7 On 22, 23 and 24 July the Commission heard arguments on the construction of S.72. It reserved its decision. The proposed hearing of 28 July was by agreement deferred. On 31 July the Commission sat and heard submissions on a request on behalf of the Judge for the issue of a large number of summonses to witnesses.

2.8 By 31 July the Commission had been informed by the Judge's legal advisers that the High Court proceedings would not be prosecuted. The Commission was also aware of media reports concerning the Judge's health, but no information on this subject had been given to it by those acting for the Judge. Because the Commission might in these circumstances be thought to be acting inappropriately, a meeting was arranged between the Presiding Officers and the Presiding Member. At this meeting the possibility of the making of a Special Report, after a sitting of the Commission on the following day, was considered.

2.9 At the sitting on 5 August, counsel for the Judge tendered a medical certificate relating to the Judge's health. The Commission adjourned further sittings until 19 August. On the same date it announced the result of its consideration of S.72, but not its reasons. Also on the same date, the Commission sent its first Special Report to the Presiding Officers, setting out its views on the effect of the Judge's illness on the Commission's proceedings.

2.10 On 19 August the Commission published the reasons of the three members for the already announced conclusion on the meaning of S.72. It was then known that the Repeal Bill would go before the House of Representatives on 20 August; in these circumstances the Commission adjourned all further proceedings sine die.

2.11 On the same day, a second Special Report, with the reasons for decision on S.72 attached, was sent to the Presiding Officers.

2.12 In fact the Repeal Bill was not passed in that week of sitting; but since the issue in Parliament was not the repeal of the Act but the disposal of the Commission's documents, and since nothing which was both fair and useful could be done in time for the Report which S.8 requires to be delivered before 30 September, the Commission has not revoked its last adjournment order.

2.13 It will be appreciated from the above that the Commission has, up to the present date, heard no evidence whatsoever concerning the conduct of the Judge.

2.14 This account explains why the statutory report must take this form which now follows.

3. Report Pursuant to S.8

3.1 The Commission accordingly reports:-

(a) that it has made no findings of fact;

(b) that it has therefore formed no conclusions or opinions whether any conduct of the Judge has been such as to amount to proved misbehaviour within the meaning of S.72 of the Constitution.

Administrative Matters

4.1 The Commission considers that the general disposal of documents generated by the commission is, in the absence of any statutory direction, a matter for the Presiding Officers to determine. The Commission's powers do not enable it to give directions itself, except for the limited purposes of S.34.

4.2 The members of the Commission wish to record that they have been singularly well advised and served both by counsel and the professional officers assisting the Commission and the Secretary and other members of the Commission's staff.

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Draft

Final

Final

PARLIAMENTARY COMMISSION OF INQUIRY
Report to the President of the Senate

1. Introduction

1.1 The Parliamentary Commission of Inquiry was constituted by the Parliamentary Commission of Inquiry Act 1986, which received Royal Assent on 13 May 1986.

1.2 Pursuant to section 4 of the Act, Commissioners and a Presiding Member were appointed by the necessary resolutions. The appointments were completed on 27 May.

2. Action taken by the Commission

2.1 The members of the Commission first met on 28 May in Melbourne, for the purpose of initiating steps for the administration of the Commission.

2.2 The first formal sitting of the commission took place in Sydney on 3 June. The Commission took and expressed the view that the performance of the duties imposed on it by S.5 required the examination of the materials made available to it by the Act, and such other material as it might receive, for the purpose of deciding whether those materials contained references to the Honourable Lionel Keith Murphy (the Judge) which were capable of being formulated as "specific allegations made in precise terms." It also took and expressed the view that it should carry out further investigations if it appeared possible that such investigations would give precision or support to the suggestions or accusations made in those references.

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2090
On Wandaup
file

FILE NOTE

On 14 August 1986 discussions were held with Mr P Brazil, Secretary, Attorney-General's Department, concerning a draft Bill to repeal the Parliamentary Commission of Inquiry Act and associated matters.

2. In particular, suggestions were made for re-framing clauses 5 (omit "to a member or a legal practitioner") and 7 (to limit the breadth of its operation).
3. Consideration was given to the question of what papers should be passed to Parliament under the proposed legislation. It was noted that the Commission proposed the destruction of working documents the substance of which is absorbed into, or the purpose of which is served by, other later documents. This would eliminate superfluous documentation. Mr Brazil said he saw no problem with this approach.
4. It was also noted that it was proposed to delete from any pages or floppy discs the names of any persons who had provided information to the Commission on a basis of confidentiality of identity.
5. On the matter of the Commission's "judgment" on what is meant by "misbehaviour", it was conveyed to Mr Brazil that the Commissioners were strongly of the opinion that it should be made public and that they should not be taken to have consented to any other course. Mr Brazil agreed to raise this also with the Attorney.



J F Thomson
Secretary

15 August 1986

" Wandaup file

Information of interest to law enforcement agencies in the possession of the Parliamentary Commission of Inquiry

1. Such information is contained in:

- (1) documents received from law enforcement agencies relating to the conduct both of Mr Justice Murphy and of other persons (class A documents);**
- (2) documents received from individuals containing material relating to the conduct both of Mr Justice Murphy and of other persons (class A documents);**
- (3) documents received from individuals containing material relating only to the conduct of persons other than Mr Justice Murphy (class B documents);**
- (4) documents prepared by the Commission containing information received from individuals, which documents contain material relating to the conduct both of Mr Justice Murphy and of other persons (class A documents);**
- (5) documents prepared by the Commission containing information received from individuals, which documents contain material relating only to the conduct of persons other than Mr Justice Murphy (class B documents).**

2. The provisions of the Parliamentary Commission of Inquiry legislation relevant to these documents ~~are~~

- (i) none of the documents were 'produced by a witness in the course of giving evidence before the Commission' for the purposes of s.16 of the PCI Act or of cl. 5(1) of the Repeal Bill.**
- (ii) section 18(2) of the PCI Act provides for the Commission to return documents to persons when their retention ceases to be reasonably necessary for the purposes of the Commission.**
- (iii) section 34 of the PCI Act makes provision for the communication by the Commission, if it so wishes, to law enforcement agencies of information that relates, or may relate, to the commission of an offence.**
- (iv) section 8 of the PCI Act makes it a criminal offence to publish any allegation relating to the conduct of Mr Justice Murphy derived from materials before the Commission.**

(v) class A documents are dealt with by the stricter provisions in cl. 7(3) of the Repeal Bill.

(vi) class B documents may be provided with the written authority of the Presiding Officers.

3. The Commission proposes dealing with these documents as follows:

(a) documents received from a law enforcement agency or an individual - documents in (1), (2) and (3) - will be returned to the person from whom they were received, having regard to the s.18(2) of the PCI Act.

(b) the Commission has received a request from the National Crime Authority to forward to it information contained in documents (2) - (5) above. The Commission is considering this request in accordance with s.34 of the PCI Act.

4. There is nothing in the PCI Act or the Repeal Bill to prevent individuals providing to a law enforcement agency, or that agency using, documents they provided to the PCI, or copies of thereof, containing material relating to the conduct of persons - (3) above - even if the documents also contain material relating to Mr Justice Murphy - (2) above. Nor are individuals prevented from providing to a law enforcement agency, or that agency using, the same information as they provided to the PCI - ie. the information in (4) and (5) above.

5. If individuals did not come forward to a law enforcement agency with their documents or information and the only source of the agency's information was in any document provided to the agency by the Commission, cl. 8 of the Repeal Bill would prevent the agency disclosing any allegation relating to Mr Justice Murphy in that document.

MEMORANDUM

TO: Mr Charles
Mr Weinberg
Mr Robertson
Mr Phelan
Mrs Sharp
Mr Thomson

FROM: Mr Durack

DATE: 5 August 1986

RE: MATTERS TO BE DEALT WITH PRIOR TO PARLIAMENT SITTING ON
19 AUGUST 1986. (discussed at conference - 10.45 a.m.
5 August 1986.

From the discussions referred to above 5 categories of work emerged that could be dealt with prior to the 19 August 1986. They are as follows :

1. Continued Investigations

- (i) interviewing of police officers re verification of Age Tape material (approx. 50 police involved).
- (ii) Steven Bazley interview.
- (iii) Chief Inspector Dixon and A Watson re SALA.
- (iv) Briese Diaries - interview with Briese's solicitor.
- (v) D Rofe QC interview.
- (vi) Immigration rackets.

NOTE: A Phelan and his team to continue investigations re the above matters save for D Rofe QC who will be interviewed by M Weinberg and D Durack.

2. Briefs be prepared in following matters in anticipation that Commission may continue its work after 19 August 1986:

- (i) D Thomas - Allegation 1.
- (ii) Unsworn statement - Allegation 14.
- (iii) Greek conspiracy case comment - Allegation 39.
- (iv) Perjury re Staunton - Allegation 16.

NOTE: A Phelan preparing (i)
M Weinberg " (ii)
A Robertson " (iii)
D Durack " (iv)

3. Memorandum to be completed on all matters that have not been drafted as allegations or do not require further investigation i.e.

- 5. Saffron - surveillance
 - 7 Ethiopian Airlines
 - 8 Diamonds for Ingrid
 - 9 Soviet Espionage
-
- 17 Dinner Party - non disclosure

- 19 Paris Theatre
- 21 Lusher and the Board of three
- 22. Pinball machines
- 28 Outburst after trial
- 29 Stewart's letter
- 30 Quartermaine -Moll tax evasion
- 31 Junie Morosi
- 32 Connor view of the Briese matter
- 34 Wood shares
- 36 Staples J - "Dams" case?
- 35 Trevor Williams
- 37 Pornography direction
- 38 Dissenting judgments
- 41 Chamberlain comment

NOTE: Draft of D Durack being added to by A Robertson and P Sharp

- 4. Preparation of a statement as to what has been done by the Commission including the 14 allegations drawn and served on the Judge.
-

NOTE: A Phelan has commenced this task and he will circulate his draft for perusal and contribution.

5. Memorandum on 14 Allegations

This memorandum will be drawn following a perusal of the Commissioners' reasons (following the ruling today) on the meaning of the words "proved misbehaviour" in section 72 of the Constitution. The task contemplated is to see if the allegations (assuming they are proved) come within the meaning of "proved misbehaviour" adopted by the Commissioners.

NOTE: The allegations have been broken up for this purpose as follows: (some require nothing to be done as indicated).

Allegation 1.	Thomas -	nothing required as a crime is alleged.
2	Lewington -	nothing required as a crime is alleged
11	Sankey -	contempt of Court alleged
14	unsworn statement)	
20	Rofe)	- M Weinberg
39	Greek conspiracy)	
23	Milton Morris)	- A Robertson
24	Smelling like a Rose) (Parliamentary privilege)	

- 25 Central Railway) D Durack
27 Luna Park) P Sharp
(tradition of judicial
intervention in public
contracts etc)
- 18 Jegorow
(Intervention
in appointments)
- 33 Staunton approach - S Charles

D N Durack
Instructing Solicitor

5 August 1986

2869A

STATUTORY DECLARATION

I, STEVE GREGORY MASSELOS

of [REDACTED] in the State of New South Wales,

do solemnly and sincerely declare as follows:

1. I am the Solicitor for Mr Justice Lionel Keith Murphy in the matter of the Parliamentary Commission of Inquiry.
2. I am informed and verily believe that the medical certificate of Dr. Rob Griffiths dated August 1 1986 a true copy of which is annexed hereto and marked with the letter "A" is true and correct.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act, 1900 (as amended).

Subscribed and declared at SYDNEY
this 5th day of August
one thousand nine hundred and eighty six
before me

[REDACTED]
Solicitor/Sydney

} [REDACTED]

Dated August 5, 19 86

Statutory Declaration
of

.....STEVE GREGORYMASSELOS.....

.....

.....



Mr Justice Murphy is a 63 year old man whose symptoms, enlarged liver and chronic anaemia, suggested carcinoma of the colon. This was confirmed by X-ray examination of the bowel and by colonoscopy.. The cancer has spread throughout the liver, as evidenced by clinical and ultrasound examination.

Carcinoma of the colon with diffuse liver involvement is a terminal disease. While it is difficult to prognosticate in any individual, the life expectancy for a patient suffering from this stage of colon cancer, without further treatment, is in the order of 3-9 months. Should chemotherapy be used, there is a limited (about 20%) prospect of prolonging his survival for a further period of months.

Mr Justice Murphy has been seen by the following specialists:

1. Professor William Doe,
Specialist Physician in Gastroenterology,
Department of Medicine and Clinical Science,
Woden Valley Hospital, Canberra
2. Mr Ray Hollings,
Specialist Colorectal Surgeon,
Royal North Shore Hospital,
Sydney


who concur with the above statement.


Rob Griffiths, MB BS (Mon), MRCP (UK),


1 August 1986

THIS IS THE ANNEXURE MARKED WITH THE LETTER
"A" REFERRED TO IN THE STATUTORY DECLARATION
OF STEVE GREGORY MASSELOS

SUBSCRIBED & DECLARED ON THE 5th DAY OF AUGUST, 1986.

.. 
Solicitor/Sydney



ATTORNEY-GENERAL'S DEPARTMENT

SECRETARY'S OFFICE

TEL: 71 9000

ROBERT GARRAN OFFICES
NATIONAL CIRCUIT
BARTON A.C.T. 2800

FACSIMILE NO: [REDACTED]

TO: ..Parliamentary Commission of Inquiry
 Attention: Mr F. Thompson

FROM: ..Mr. Brazil.....

DATE: ..20. August. 1986.....

TIME: ..4.45pm.....

NO OF PAGES

TO FOLLOW: ..2.....

MESSAGE:

URGENT

hd
 ↳ Winding up file ps

FERGUS THOMPSON

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Parliamentary Commission of Inquiry (Repeal) Bill 1986

Second Reading Speech by the Hon. Lionel Bowen,
Deputy Prime Minister and Attorney-General

Madam Speaker, this Bill is to repeal the Parliamentary Commission of Inquiry Act 1986 and thereby to terminate the inquiry which the Commission was established to carry out.

The Commission was set up to inquire and advise the Parliament whether any conduct of Mr Justice Lionel Murphy had been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution. The Act requires the report to be made on or before 30 September 1986 unless that date is extended by resolution of each House of the Parliament.

Honourable members will be aware of the distressing news of Mr Justice Murphy's illness. In a statement issued on 1 August 1986, he said that his medical advice is that he has an advanced state of cancer in its secondary stages, and that there is no cure and no treatment. The advice is that in the absence of a remission he will not live very long. This advice was confirmed in a Special Report of the Parliamentary Commission of Inquiry to the Presiding Officers dated 5 August 1986, which was circulated to the leaders of the various parties in the Parliament and tabled yesterday. I inform the House that I was advised by Mr Justice Murphy on 5 August that his health was deteriorating to the extent that he

would not be able to continue to sit on the Court after that week, that he was going on sick leave and that he was proposing to devote himself to writing up judgments upon which he has yet to make delivery.

It was with profound sadness that I learnt of Mr Justice Murphy's illness. All honourable members will have felt the same. As already stated on behalf of the Government, Lionel Murphy and his family have already had to bear more stress in the last two and a half years than most people experience in a lifetime. They will have the sympathy of every compassionate and fair minded Australian as they face this severest ordeal of all.

The matter this Parliament must now address is the inquiry. The Special Report of the Commission tabled yesterday states that the illness of the Judge, in combination with the fact that its inquiry will take at least four more months, raises the question whether the statutory task set for the Commission can be discharged at all. The Commission has made plain its own views, which are that to continue hearings if the Judge were too ill to take part in them would be contrary to established practice and to natural justice.

The Commission's inquiry should be terminated forthwith, and that is what the Bill before the House does.

The Bill also includes special consequential provisions. These are made necessary by the fact that the Commission has not made, and will not be able to make, any findings in relation to matters before it.

In particular it is necessary to protect from access and publication any allegations against Mr Justice Murphy.

For these purposes, clause 7 has the effect of transferring the documents in the possession of the Commission immediately before the commencement of the repealing Act to the care of the Presiding Officers. Clause 8 makes it an offence to publish allegations derived from materials before the Commission.

I turn then to clauses 7 and 8. Clause 7(1) and (2) make provision for the transfer into the care of the President of the Senate and the Speaker of the House of Representatives of the documents in the physical possession of the Commission immediately before the commencement of the repealing Act.

As regards documents which contain any material relating to the conduct of Mr Justice Murphy, provision is made in clause 7(3) to exclude access under any other Federal, State or Territory law, including the Freedom of Information Act 1982, the Archives Act 1983 and any law which provides for the production of documents. Evidence concerning these documents by the persons referred to in clause 7(3) is also excluded.

As regards documents which do not contain material relating to the conduct of Mr Justice Murphy, access may be obtained but only under the exclusive code provided in clause 7(4). Specific reference is made to any material relating to the meaning of section 72 of the Constitution. Such material could be of general public interest, and it would be able to be released if it does not contain material relating to the conduct of Mr Justice Murphy. Access will be a matter to be decided by the Presiding Officers. As indicated clause 7(4) is an exclusive code; in particular, access under the Freedom of Information Act or the Archives Act will be excluded, as will any law which provides for the production of documents.

At the winding up of the Commission, there will be some documents with agencies covered by the Freedom of Information Act. Clause 7(5) has the effect that the agencies are exempt from the operation of the Freedom of Information Act in relation to documents which have been created for the purposes of the Commission.

Clause 8 is an overriding provision that makes it a criminal offence to disclose any allegations derived from materials before the Commission relating to Mr Justice Murphy or any information relating to consideration in the Commission of any particular allegation. Now that the inquiry is being wound up it would be oppressive and unconscionable to allow the

circulation of allegations derived from materials before the the Commission but on which no report by the Commission will ever be available. The provision is limited to allegations "derived" - and I emphasise the word "derived" - from materials before the Commission, and any information relating to the Commission's own consideration of any particular allegation. The provision says nothing about materials that exist independently of the Commission.

Finally, I want to emphasise to the House in the plainest way that the Commissioners themselves see enormous difficulties in their ever being able to complete their inquiry into any of the allegations in any satisfactory way. My own conclusion, based on what they have said, is that to continue the inquiry would be a futile and oppressive exercise.


I express my thanks and appreciation to each Commissioner for undertaking the inquiry that Parliament set up. Each is a distinguished retired Senior Judge. The presiding member of the Commission is Sir George Lush, a former Judge of the Supreme Court of Victoria. Sir George retired from the Supreme Court in October 1983 after 17 years on the bench. He was Chairman of the Victorian Bar Council and President of the Australian Bar Association from 1964 to 1966. Sir Richard Blackburn, a former Chief Justice of the ACT Supreme Court, was appointed as the ACT's Chief Judge in 1977. Sir Richard was also a member of the Federal Court of Australia, and a Judge of the Northern Territory Supreme Court from 1956 to 1971. The Honourable Andrew Wells, QC is a former Judge of the Supreme Court of South Australia. Mr Wells retired in 1984 after 14 years on the Bench. The two former State Judges were chosen after consultation by the Prime Minister with the Premiers of Victoria and South Australia. Sir Richard Blackburn accepted my invitation to serve on the Commission. The appointments were finally made after consultation with the Opposition and the Australian Democrats.

I commend the Bill to the House.

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J F Thomson
Secretary

15 August 1986

Handing up Bill