



## Royal Commission into Trade Union Governance and Corruption

2 October 2014

Senator the Hon George Brandis AC  
Parliament House  
Canberra

Dear Attorney,

Re: Royal Commission into Trade Union Governance and Corruption

On 13 March 2014, the then Governor-General issued Letters Patent appointing the above Commission of Inquiry. She required the Report no later than 31 December 2014. An appointment has been made with her successor for 11am on 15 December 2014 as the occasion on which the Report will be submitted.

It may be desirable to describe briefly what the Commission has done so far, what remains to be done, and what difficulties exist in its path.

Initially there was a start-up phase in March and April during which suitable premises in Sydney were procured, personnel were assembled and the Commission commenced its documentary gathering phase. The Commission has issued over 600 Notices to Produce. There have been nine private hearings and many days of public hearings. These hearings have been conducted in Melbourne (two weeks), Brisbane (four days) and Perth (two days), as well as Sydney. It is expected that the last public hearings will take place in late October. More than 200 witnesses have given oral evidence to the Commission during its public hearings. Many of the witnesses have been recalled or given evidence on more than one occasion. In addition, a number of further witnesses have given their evidence in written form by affidavit or statement. More witnesses will give evidence in October.

During October and early November the written submissions of counsel assisting will be served on all affected persons, and reply submissions from them will be received. Some days will be set aside in November for the purpose of hearing oral addresses. In contrast to the practice of the New South Wales Independent Commission Against Corruption, for example, the written submissions will be publicly available and the oral submissions will be heard in public. In that way persons who have been affected by adverse evidence given in public may answer it, if they can, in public.

## 2.

Those primarily responsible for work on the terms of reference have been the three Counsel Assisting. The public owes them a considerable debt. They have worked very thoughtfully and very hard. They are looking forward, with what is, I think, a justifiable sense of pride, to completing what may be a unique achievement in modern Australian history – delivery of a Royal Commission Report within the time originally allotted.

The reporting date of 31 December 2014 created an atmosphere of considerable urgency. As a result, much more work has been done by this stage than would have been done if the reporting date had been later.

Has that work been valuable? That will be a matter for the judgment of each reader of the Report when it is delivered on 15 December 2014. It is true that it has not been possible in the short time available, and indeed would not have been possible in a much longer period, to identify every piece of conduct falling within the Commission's terms of reference.

However it would not have been necessary in fulfilling the Commission's task to have done so. The primary purpose of a Royal Commission is to collect information that may be "used in the administration of the affairs of the country" (*Clough v Leahy*, per Griffith CJ), thereby exposing and addressing the underlying causes of the crisis of public confidence that motivated the Executive to establish the Commission. It is to that end that part of the Commission's task is to conduct a broad range of inquiries, and select for public hearings case studies that are representative of a cross-section of practices and conduct relevant to the Commission's terms of reference.

By December it will be possible to illustrate representative aspects of conduct falling within paras (a)-(f) of the terms of reference. These relate to many types of fund, set up by many different unions – for example, "slush funds" (dedicated to funding the re-election campaigns of particular tickets of officials), superannuation funds, redundancy and income protection schemes, and funds for general purposes relating to union interests. The evidence relevant to these topics has been comprehensive and will enable appropriate findings and recommendations to be made.

The position is more complex in relation to matters falling within paras (g)-(k). These paragraphs are directed to corrupt and illegal conduct by trade union officials.

The inquiry thus far has revealed evidence of criminal conduct which includes widespread instances of physical and verbal violence, cartel conduct, secondary boycotts, contempt of court and other institutional orders, and the encouragement of others to commit these contempts. Some officials appear to regard their unions as having immunity not only from the norms and sanctions of the Australian legal system, but also from any social or community standard shared by other Australians. Again, the Commission's inquiries to date, and those that it will continue to pursue in the remaining time available, will enable certain findings and recommendations to be made consistent with the Commission's terms of reference.

There are dimensions of criminal conduct revealed by the evidence thus far suggesting that a more thorough examination of the matters listed in paras (g)-(k) is desirable.

3.

If it were thought important to continue the attack on the problems under discussion, it would probably be desirable to widen the terms of reference. Interfering with witnesses, for example, falls outside paras (a)-(j), and it is only on a very stretched construction that it falls within para (k) ("any matter reasonably incidental to a matter mentioned in paragraph (a)-(j)"). A possible new paragraph might be:

"(ia) any criminal or otherwise unlawful act or omission undertaken for the purpose of facilitating or concealing the conduct mentioned in paragraphs (g)-(i);"

A consequential amendment would be necessary to para (j) line 3 by deleting "(i)" and substituting "(ia)".

It would be desirable to maintain the balance of the Commission's terms of reference so as not to compromise its ability to address matters relevant to paras (a)-(f) of the terms of reference, should significant new information come to light that warrants further investigation by the Commission.

This letter is neither an application to widen the terms of reference nor an application to extend the reporting date. Its goal is simply to acquaint you with what the senior staff of the Commission think can be achieved by December, with the difficulties which, in their view, have faced the Commission thus far, and with some possibilities thereafter.

Yours sincerely,



J D Heydon