

Royal Commission Into Productivity In The Building Industry - First Interim Report of the Royal Commissioner, Roger Gyles Q.C.

My second Term of Reference is as Follows:

“The nature, extent and effects of illegal activities that occur in, or in relation to, the building industry in New South Wales including (but not limited to):

- (a) intimidation and violence;
- (b) secret commissions;
- (c) extortion; and
- (d) any other corrupt conduct”.

That part of the third Term of Reference which is relevant for present purposes is as follows:

“Whether, in view of your findings in relation to the matters set out in paragraph 2, there are any measures (including legislative and administrative changes) which should be made to deter illegal activities in, or in relation to, that industry”.

In my Opening Statement on 8 October last, and in the Interim Statement which I made on 19 December last, I drew attention to my view that, by contrast to other Inquiries, these Terms of Reference do not require me to make any findings in relation to the guilt or otherwise of particular individuals or organisations. Whilst it has been, and will be, necessary to examine many cases, involving many individual persons and organisations, and to express conclusions about them, the purpose of doing so, in my view, is to enable soundly based answers to be given to the general questions raised by Term 2, which in turn will be the basis for recommendations under Term 3. There is also considerable interplay with the issues of efficiency and productivity arising under Term 1. It is not my role, nor the role of Counsel Assisting me, to act as Prosecutor in any sense. Even if I choose to express conclusions about the involvement of particular persons or organisations in illegal activities, they would be based upon the evidence and other material before me, which will almost certainly include material which would not be admissible in a civil or criminal trial, and I will not apply the criminal standard of proof. The purpose of my expressing conclusions would not be to express my view as to the ultimate prosecution of such persons or organisations, but, as I have said, rather to form the basis for the answers to Terms 2 and 3.

1. Formation of Task Force for Prosecutions

The fact remains that the Commission will assemble a great deal of material pointing to illegal activities by a number of persons and organisations. Some of that material will be thoroughly examined in public session and commented upon in my Report. Other material will be investigated by Commission staff, but will not be dealt with in public session because of limitations of time. Other

material will hardly be investigated at all because of the priorities established, given those limitations of time. I have little doubt that new information relevant to Term 2 will continue to flow in for the whole of the life of the Commission. By way of illustration, at the moment there are 9 major investigations on foot in preparation of material for hearing, and there are more than 120 additional current operational files.

It is obvious that this body of material must be dealt with in some way at the end of my Commission. It is equally obvious that it would not be sensible to delay consideration of that question until my final recommendations. The first question is to decide the most appropriate mechanism for dealing with this material. In relation to matters which have been fully investigated, the task is to assess whether the available evidence warrants prosecution, and then following through any such prosecution. In the case of partly investigated matters, the first task is to complete the investigation. The mechanism which was adopted in similar circumstances arising out of the Costigan Royal Commission (1) and the Fitzgerald Commission of Inquiry (2) was the appointment of Special Prosecutors. I do not think that the nature of the criminality in the present Commission demands that response, which is best left to those situations where, because of the nature of the offences, or the identity of the persons involved, the public cannot have confidence that the ordinary processes would result in justice being done. On the other hand, I do not think that it is a sufficient response to simply pass completed investigations to the Director of Public Prosecutions and incomplete investigations to the Commissioner of Police.

The scope and complexity of the investigations involved are considerable. The Commission staff which is handling them consists of lawyers, experienced building industry analysts, financial analysts, general analysts, and investigators (many of the latter either seconded from the police or with police backgrounds). It is now well recognised that complex criminal investigations, particularly those involving commercial matters, are most effectively and efficiently carried out by a multi-disciplinary task force. My own experience, both with the present Inquiry and as Special Prosecutor concerned with “bottom of the harbour” taxation frauds, bears this out.

My recommendation is that such a multi-disciplinary task force be given the responsibility for completing investigations to prosecution. At least the nucleus of that Task Force should, if possible, be composed of those presently employed by the Commission in the relevant area. I would recommend that the Task Force be established pursuant to arrangements made between the Director of Public Prosecutions and the Commissioner of Police, and which clearly

delineate the role and function of the Task Force. I would keep open the possibility of involving relevant Commonwealth authorities such as the Australian Federal Police, the National Crime Authority and the Commissioner of Taxation in the Task Force as plans develop. It is important that the arrangements be flexible in so far as terms of engagement are concerned, to ensure that persons with the appropriate skills can be engaged. Steps should also be taken to ensure that the Task Force can have unfettered legal and practical access to material obtained in the course of this Inquiry. I would recommend that the Task Force be given a definite term, so that momentum can be maintained and "institutionalisation" kept to a minimum. My recommendation would be a period of one year. That should enable most of the substantial investigations to be brought to a stage where the Director and the Commissioner would be in a position to make a decision as to the best future handling of matters. I would also recommend that the head of the Task Force be obliged to report progress to the Premier and Attorney General as well as to the Director and the Commissioner at the expiration of the twelve months term. I would recommend that the Report be in a form that would enable it to be tabled in Parliament, even if portions of it could not be made public for fear of affecting current or proposed criminal proceedings. I make no specific recommendations as to the size or composition of the Task Force, nor as to its personnel, but would venture the view that anything less than the establishment of the Operations Division of the Commission is unlikely to be sufficient to seriously undertake what will be a considerable task. I recommend that the Task Force be established to commence operations on 1 August. I would expect that most personnel employed in the Operations Division of the Commission will not be required further for my purposes after that date.

If these recommendations are implemented, I believe that the public can be assured that material disclosed in the course of this Inquiry does not suffer the fate of being placed in somebody's "bottom drawer", but will be pursued both skilfully and diligently. It will also enable the public and those persons who become subject to investigation by the Commission to clearly appreciate the difference between the role I am playing on the one hand and the role which the Task Force will play on the other. I do not think it appropriate at this stage to make any recommendations as to longer term measures concerning the investigation of criminality in the building industry. This will be a matter to be considered in my Final Report.

2. Appointment of Additional Commissioner

The other matter I shall address is the best method of conducting the balance of the Inquiry so as to ensure that a Report which does justice to the topic can be produced by 30 September next. It will be apparent from what appears above that there will be more than sufficient material available, relevant to Term 2, to fully occupy every day between now and 30 September in public hearings. This is not practicable. In addition to listening to evidence, and considering exhibits which are tendered, I have to receive submissions from those affected, from Counsel Assisting,

make up my mind as to the various issues which arise under Term 2, and reduce those conclusions to writing. At the same time, the Policy & Research program, which I outlined in my Interim Statement of 19 December last, will be proceeding, and producing material which I will need to understand, and which will need to be made available for public and industry consultation. I will have to make up my mind as to my conclusions concerning Term 1, and reduce those to writing. I must ultimately form views as to recommendations for reform. This process may involve further public and industry consultation. I then need to complete my Final Report.

I have concluded that within a few weeks I will need to devote an increasing amount of my own time to matters other than public hearings. If no other step is taken I would have to cease hearing evidence no later than 30 June. In my opinion, such a program would not enable a proper cross section of material to be presented in public hearings. Whilst it was, of course, never to be expected that this Inquiry would reveal and deal with all instances of possible illegal conduct in relation to this vast industry, it is most important, in my view, that a fairly representative sample be publicly exposed. Whilst I am aware that there is some scepticism amongst those directly involved in the industry as to the worth of this process, I am of the clear view that it is essential. I have no doubt that the process of genuine and informed reform of the industry will be very much assisted by having problems properly exposed to the general public and parliamentarians. I also believe that public hearings will do much to improve the morale of the thousands of people who work in the industry who have a genuine desire that it be "cleaned up", but presently feel powerless to do anything about achieving that desire. I would thus recommend that the Government commission another person to inquire into such matters relevant to this Inquiry as I refer to that person, and to report upon them by such time as would enable me to take that Report, and, of course, the evidence at the hearings, into account in forming my own conclusions. That was the course adopted when the Fitzgerald Commission of Inquiry was confronted with a similar question.

Whilst this course will involve some increase in cost of the Commission, I would regard it as relatively modest in overall terms, and it would involve a better utilisation of the physical and personnel resources of the Commission. I would recommend that the time for reporting be on or before 31 August and that the period of engagement between now and then and other formalities be settled between the Government, the proposed appointee and myself.

End Notes

1. Costigan F, Report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, Canberra, 1984.
2. Fitzgerald G E, Report of a Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct Pursuant to Orders in Council, Brisbane, 1989.