

Legislative Council

615B

Tabled September 19 1995

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LEGISLATIVE COUNCIL

How Kin Chance

Select Committee of Privilege

Subject: *Interim Report*

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LAI'D UPON THE TABLE

**INTERIM REPORT OF THE
SELECT COMMITTEE OF PRIVILEGE CONCERNING
DOCUMENTS OBTAINED AND RETAINED BY THE
ROYAL COMMISSION INTO USE OF EXECUTIVE POWER**

1. ESTABLISHMENT AND TERMS OF REFERENCE OF COMMITTEE OF PRIVILEGE CONCERNING DOCUMENTS OBTAINED AND RETAINED BY ROYAL COMMISSION INTO USE OF EXECUTIVE POWER

On Tuesday, September 5, 1995 the Leader of the Opposition moved for the appointment of a Select Committee of Privilege which was agreed to by the House in the following terms —

That —

- (1) A Select Committee be appointed to inquire into and report on, not later than Tuesday, September 19, 1995 —
 - (a) the circumstances whereby officers of the *Royal Commission Into Use of Executive Power* became possessed of a file or bundle of documents belonging to Hon John Halden;
 - (b) the nature or type of the documents referred to in (a);
 - (c) whether any, or all, of the documents excised from the file or bundle at the request of Hon John Halden following his inspection of them on Friday, September 1, 1995 and retained by counsel representing the Legislative Council are subject to confidentiality or non-publication according to the rules and usages of this House or are, for any other reason, unable to be dealt with otherwise than in accordance with an order of this House;
 - (d) the use (if any) made, or intended to be made, by the *Royal Commission Into Use of Executive Power* of any document referred to in (c) and which, in the committee's opinion, is a document whose publication or use is subject to a further order of this House permitting or authorizing its intended publication or use;
 - (e) whether, in relation to a document of a type referred to in (d), one or more persons has committed a breach of the privileges, or a contempt, of this House.
- (2) The committee have power to send for persons, papers and records.

1.1 Select Committee Of Privilege - Membership

On Tuesday, September 5, 1995 the Leader of the House, Hon George Cash MLC, moved the following motion —

That the Select Committee of Privilege on Documents held by the *Royal Commission Into Use of Executive Power* consist of the Hons Peter Foss, Murray Criddle and Kim Chance.

Debate on this motion was adjourned.

On Wednesday, September 6, 1995 debate resumed on the motion and was finally agreed to.

2. COMMITTEE MEETINGS

The Committee has met to deliberate on Thursday, September 7, 1995, Monday, September 18, 1995 and Tuesday, September 19, 1995, and at its first meeting elected Hon Kim Chance to be Chairman of the said Committee.

3. MATTERS GIVING RISE TO THIS INTERIM REPORT OF THE COMMITTEE

On introducing the motion for the Committee Hon John Halden said —

Hon JOHN HALDEN: In order that the House can make an informed decision about this motion I will briefly detail the events of last Thursday. That will give the House some understanding of what transpired on that day and will probably support my statement of events of last Thursday. On Thursday morning investigators from the *Easton Royal Commission* contacted my electorate officer and requested permission to visit a government warehouse in, I think, Welshpool, the exact whereabouts of which I do not know. It is a place at which I have stored furniture and boxes of various documents, books and the like. My electorate officer relayed the request to me and I agreed to it. The officers then asked whether I wanted someone to accompany them. I conferred with my electorate officer and she agreed to do that. At some time prior to midday they collected her and went out to the warehouse in Welshpool where they inspected documents.

The *Royal Commission* investigators discovered a file titled "Standing Committee on Constitutional Affairs and Statutes Revision" of which they proceeded to take possession. They then returned my electorate officer to my electorate office, commonly known as the "summer palace", in Parliament House. She then proceeded to inform me of what happened. I immediately said she would have to ring the *Royal Commission* and ask if they would bring back the documents so that I could establish whether any of those documents in that file were privileged. The *Royal Commission* officers refused to comply with her request. Subsequently, at 2.55

on Thursday afternoon in the presence of the Clerk of the Council in his office I spoke to Michael Johnson the Executive Officer to the *Royal Commission* and, I think it is fair to say, demanded those documents be returned to me so that I could establish whether any of them were privileged. I made it clear that I was happy for the *Royal Commission* to keep those documents that were not privileged. He undertook to see whether my request could be met.

I did not hear back from Mr Johnson. However, at 3.45pm I spoke to another investigator, again demanding the return of the documents. He also refused to return the documents to me and advised that the documents would be transferred to someone else. In the meantime, my office received a message from the *Easton Royal Commission* that the documents were to be transported to Mr Wauchope, the Chief Executive Officer of the Department of Premier and Cabinet. I understand that Mr Wauchope realised the inappropriateness of the highest level of the Executive having those documents in his possession, particularly if they were privileged. He therefore refused to take possession of them. They were placed in the possession of counsel - without meaning to be offensive, I am not sure whether it was counsel representing the Legislative Council or the President. As you said to the House, Mr President, we inspected those documents last Friday.

I will clarify why I think some of those documents are privileged. The President and I bundled up the documents and numbered them. A report is included titled "Final Report Standing Committee of Constitutional Affairs Inquiring into the Petition of Grievance of Brian Easton pages 1 to 5". That report has not been released. Included also is a set of minutes numbered 17/92 of the Standing Committee on Constitutional Affairs and Statutes Revision. Included also is a Hansard transcript of page 21 from the Constitutional Affairs and Statutes Revision Standing Committee. I cannot establish whether the page from Hansard was released as a document, but I have included it so that its privileged status or otherwise can be established. The second item was draft No 1 of the Standing Committee of Constitutional Affairs and Statutes Revision, final report of the inquiry into a petition of grievance by Brian Easton, November 1992, pages 1 to 11. Also attached to that were five documents and a report dissenting from the third interim report, signed by me, and numbered page 21. I am not sure why. Again, neither the report nor the dissenting report were made public. The third group of documents was the third interim report of the Standing Committee on Constitutional Affairs and Statutes Revision concerning Western Women, pages 1 to 12, R G Pike, Chairman. The fourth group of documents was draft No 2 of the third interim report of the Standing Committee on Constitutional Affairs and Statutes Revision, on alleged links between government agencies and the failed Western Women group, November 1992, pages 1 to 4. The fifth document was a draft minority report, pages 1 to 6, which was unsigned. Although it was unsigned, I have the feeling it was my minority report because I did not get the support of the other two members of that committee. The sixth document is a group of statutory declarations which are said to be exhibits 56A to 56Q of the

Western Women inquiry. I note that document 56G is omitted from that group. I have the feeling they are published documents but if they are not, they should not be in the public domain. The seventh document was a letter faxed to the Legislative Council on 19 November 1992 to the Clerk of the Committee, Pike Enquiry, 1110 Hay Street, West Perth, WA, from 35 Ewing Avenue, Bullcreek, WA, 6152. That letter was signed by Margaret McAuley on 17 November 1992. Again, I am not sure whether it is a public document, but the committee should establish that. (Our emphasis).

I have had little time to explain this matter and describe those documents, but I think members will agree we should be concerned that some of them are most likely to be privileged. I am happy for the committee to establish their status as such, or otherwise. I place on the record that my first belief in this matter was that the investigating officers of the commission may have technically breached privilege in seizing these documents. That is one point. I understand that the general public, and even investigators/police, may not have a thorough knowledge of privilege. However, telephone calls were made by my electorate officer at 2.40pm and by me at 2.55pm and 3.40pm, followed by a fax to counsel assisting the *Royal Commission*, demanding the return of those documents by 4.30pm. There can have been no doubt about my request and the claims I made. In spite of my request, and my agreeing to allow the *Commission* to have whatever else was in the file, pending adjudication on the privilege of some of the documents, assuming these are privileged documents, their conduct is difficult to understand or explain.

If I had not raised this matter last Thursday and again today, I have the feeling I may well have been in breach of privilege because of inadvertent actions on my part. I hope members will understand that once I realised the seriousness and implications of this matter, I took every possible step to ensure the confidentiality and privilege of these documents were sustained. Others, to a point, did not comply with my request. That is now history, but it is important for the House to follow the path set out in the motion and to establish whether these documents are privileged and whether the *Royal Commission* should have access to them.

The PRESIDENT: Honourable members may have been led to believe from the Leader of the Opposition's comments that the President of the Legislative Council participated in singling out the papers from the file. The President did not do so, and did not read them. The President participated by clipping the bundles together and putting them in the final file. He certainly did not read them.

Hon JOHN HALDEN: Mr President, if you thought there was any insinuation that you were involved in any more than a clerical capacity, I apologise. I certainly did not wish to do that. Your role was purely to accompany and assist me by pinning the documents together. If members or anyone else thought I was making such a suggestion, it was a wrong assumption.

4. ***PRODUCTION OF PRIVILEGED DOCUMENTS THE SUBJECT OF THE INQUIRY***

The Committee resolved at its meeting held on Thursday, September 7, 1995 that the President of the Legislative Council, Hon Clive Griffiths MLC, be requested to contact Mr M Pendlebury of Clayton Utz, seeking the return of all documents, forwarded by officers of the *Royal Commission Into Use of Executive Power*, currently in his possession.

5. ***FUTURE WITNESSES***

The Committee resolved at its meeting held on Monday, September 18, 1995 that initially Hon John Halden MLC, Ms Linda Whatman, Hon John Halden's Electorate Assistant, and the Police officers/Inspectors attached to the *Royal Commission Into Use of Executive Power* be requested to attend before the Select Committee and provide evidence.

6. ***QUESTION OF CONFIDENTIALITY AND NON-PUBLICATION OF THE DOCUMENTS EXCISED FROM THE FILE***

This Interim report relates to Term of Reference (1)(c).

The Committee perused the excised documents contained in Hon John Halden's file and together with written and verbal advice from the Clerk of the Legislative Council reports as follows.

7. ***REPORT***

Your Committee reports —

- (a) (i) of the documents referred to in Term of Reference (1)(c) all but two are under the custom usage and law of the Parliament subject to a requirement of confidentiality or non-publication;
- (ii) the sixth document referred to by Hon John Halden on September 5, 1995, a series of statutory declarations tabled before the Standing Committee on Constitutional Affairs and Statutes Revision, was made part of the public record of that Committee by an order of that Committee made on October 9, 1992 and is not subject to a requirement of confidentiality or non-publication;
- (iii) the *Hansard* transcript referred to by Hon John Halden would not normally be subject to a requirement of confidentiality because of SO 350 and SO 353 which provide —

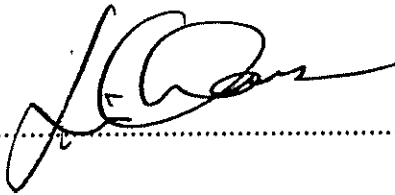
SO 350 "Proceedings are open to accredited news media representatives and the public. No person other than a member or officer of the committee may be present during a committee's deliberations."

SO 353

"A verbatim record of proceedings shall be taken and, subject to SO 351, published. Any papers, written submission and the like may be printed and published if a committee requires it."

However, the document was found in the middle of other papers which are subject to confidentiality and without knowledge of its relationship with them the Committee is presently unable to report on whether it has become subject to a requirement of confidentiality;

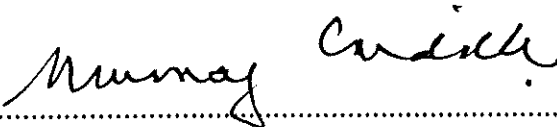
- (b) that the documents should not be returned to the *Royal Commission Into Use of Executive Power* by reason that —
 - (i) they contain privileged matter; or
 - (ii) that those which do not contain privileged matter were not obtained under compulsion of law; and
- (c) that Hon John Halden be advised he has access to the documents contained in the file.



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Hon Kim Chance MLC (Chairman)



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Hon Peter Foss MLC



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Hon Murray Criddle MLC