



**Corruption and Crime Commission Report on
Behalf of the Procedure and Privileges
Committee of the Legislative Assembly**

**Inquiry Conducted Into Alleged Misconduct by
Mr John Edwin McGrath MLA,
Mr John Robert Quigley MLA and
Mr Benjamin Sana Wyatt MLA**

Report No. 5 of 2008

Presented by Ms Dianne Guise MLA
Deputy Speaker of the Legislative Assembly
Laid on the Table of the Legislative Assembly
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ABBREVIATIONS AND ACRONYMS

“the Act”	<i>Corruption and Crime Commission Act 2003</i>
ADRA	Australian Drivers Rights Association Inc
ALP	Australian Labor Party
“the Commission”	Corruption and Crime Commission
CCC	Corruption and Crime Commission
“Fehily Loaring”	Fehily Loaring Pty Ltd
GST	Goods and Services Tax
LIB	Liberal Party
MLA	Member of the Legislative Assembly of the Parliament of Western Australia
MP	Member of Parliament
NPA	National Party of Australia
OSR	Office of State Revenue
“the Privileges Act”	<i>Parliamentary Privileges Act 1891</i>
“the Privileges Committee”	Procedure and Privileges Committee of the Legislative Assembly of the Parliament of Western Australia
PAC	Public Accounts Committee of the Legislative Assembly of the Parliament of Western Australia
SWS	Safety Warning System

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
CHAPTER ONE	
INTRODUCTION	3
1.1 Nature of the Inquiry: Statutory Framework	3
1.2 Opinions of Misconduct: Standard of Proof	8
1.3 Nature of the Inquiry: The Present Case	9
CHAPTER TWO	
THE PUBLIC ACCOUNTS COMMITTEE MATTER	17
2.1 Background	17
2.2 The Public Accounts Committee	19
2.3 The Breakfast Meeting Between Mr Quigley and Mr Burke	20
2.4 Mr Quigley's Actions Following the Meeting	24
2.5 Subsequent Communication Between Mr Burke and Mr Quigley ...	26
2.6 Letter from Fehily Loaring of 18 November 2005	27
2.7 Meeting of the Public Accounts Committee of 23 November 2005	28
2.8 Letter from the Public Accounts Committee of 23 November 2005	30
2.9 Further Attempts to Obtain an Inquiry	30
2.10 Mr Wyatt is Appointed to the Public Accounts Committee	38
2.11 Mr Quigley tells Public Accounts Committee Members of the Approaches by Mr Burke	42
2.12 Disclosure of Approaches by Lobbyists	44
2.13 Conclusions Regarding the Conduct of Mr Quigley	49
2.14 Conclusions Regarding the Conduct of Mr Wyatt	52
2.15 Recommendation	53
Recommendation 1	53
CHAPTER THREE	
THE ROAD SAFETY MATTER	55
3.1 Background	55
3.2 The Meeting with Mr McGrath	57
3.3 The Motion put by Mr McGrath	60
3.4 Communications with Mr D'Orazio	68
3.5 Conclusion as to the Conduct of Mr McGrath	70
3.6 Conclusion as to the Conduct of Mr Wyatt	72
3.7 Recommendation	73
Recommendation 2	73
ENDNOTES	75

EXECUTIVE SUMMARY

- [1] This report has been prepared for the Procedure and Privileges Committee (“Privileges Committee”) of the Legislative Assembly of the Parliament of Western Australia. It is a report relating to an investigation into allegations of misconduct against Members of the Legislative Assembly. The Corruption and Crime Commission (“the Commission”) carried out an investigation into those allegations on behalf of the Privileges Committee, in accordance with section 27B of the *Corruption and Crime Commission Act 2003*.
- [2] The first allegation is that Mr John Robert Quigley MLA, in his capacity as Chairman of the Public Accounts Committee of the Legislative Assembly, agreed to take action in relation to a proposed inquiry into the audit function of the Office of State Revenue concerning payroll tax following requests by lobbyists. The investigation in this regard has established that Mr Quigley did give Mr Brian Thomas Burke and Mr Anthony Robert Ince the impression that he would assist in arranging for such an inquiry to be conducted. However, Mr Quigley did not intend to so assist and did not do so and thus any agreement was only apparent, not real.
- [3] The second allegation is that Mr Benjamin Sana Wyatt MLA similarly agreed to take action to establish an inquiry. The investigation in this regard has established that an approach was made to Mr Wyatt but that he did not agree and did not act upon the request.
- [4] The third allegation is that Mr John Edwin McGrath MLA and others used their positions as Members of Parliament to further the private interest of a client of Mr Burke. The investigation has established that Mr McGrath did present a motion that had been provided to him by Mr Burke calling for a review of road safety policy. Mr Burke provided this motion in order to further the interests of a client who had a commercial interest in radar detectors. The intention of Mr Burke and his client was that a review may avoid or delay a ban on radar detectors. Mr McGrath has maintained that he presented the motion because he genuinely believed that a review was in the public interest and that he was never aware of the private commercial interest in such a review by Mr Burke’s client. The evidence does not establish that Mr McGrath was aware of the commercial interest.
- [5] In the Commission’s opinion no misconduct has been shown in respect of these allegations. However, the Commission recommends that the Privileges Committee give consideration to whether clear rules and procedures regarding dealings with lobbyists and disclosure of those dealings would be desirable.

CHAPTER ONE INTRODUCTION

1.1 Nature of the Inquiry: Statutory Framework

[6] In December 2007 the Corruption and Crime Commission (“the Commission”) conducted an inquiry on behalf of the Procedure and Privileges Committee (“the Privileges Committee”) of the Legislative Assembly of the Parliament of Western Australia. That inquiry was conducted pursuant to sections 27A and 27B of the *Corruption and Crime Commission Act 2003* (“the Act”).¹ Sections 27A and 27B of the Act are detailed below.

27A. Allegations involving parliamentary privilege

- (1) *Despite any contrary provision in this Act, an allegation of misconduct, not being serious misconduct —*
 - (a) *made against a member of the Legislative Council or the Legislative Assembly in the performance by him or her of the functions of that office; or*
 - (b) *made against an officer liable to be removed from office under section 35 of the “Constitution Act 1889”,*
is to be referred by the Commission to the presiding officer.
- (2) *A referral under subsection (1) is to name the member or officer and state the grounds on which the allegation is made and the nature of the misconduct by reference to a provision of section 4. The Commission is not required to disclose how it came to make the allegation.*
- (3) *Section 22(3) and Division 4 of Part 2 are excluded in their operation with respect to an allegation made under subsection (1).*
- (4) *In this section and section 27B —*
“presiding officer” —
 - (a) *is the President where the allegation relates to a member or officer of the Legislative Council, or the Speaker in relation to a member or officer of the Legislative Assembly;*
 - (b) *if —*

- (i) *the office of President or Speaker is vacant, or becomes vacant in the course of an inquiry under section 27B; or*
- (ii) *the member subject to an allegation under subsection (1)(a) is the President or the Speaker,*

is the member appointed by each House to perform the functions and exercise the powers of the President or the Speaker during his or her temporary absence or when either office is vacant.

- (5) *Nothing in this section prevents a member or officer who is subject to a referral under subsection (1) from being charged with an offence whether or not the charge relates to the matters that form the basis of the allegation so referred.*

27B. Dealing with referrals under s. 27A(1)

- (1) *The presiding officer, on receipt of a referral made under section 27A(1), must —*
 - (a) *where the allegation is made under paragraph (a), require a committee of the House whose functions include considering matters relating to the practice, procedure and privileges of the House (the “**Privileges Committee**”), to inquire into the matter;*
 - (b) *where the allegation is made under paragraph (b), require the Commission to conduct an inquiry.*
- (2) *If the Privileges Committee resolves to carry out its own inquiry, it must do so by directing the Commission to act on its behalf.*
- (3) *For the purposes of an inquiry under this section, the Commission —*
 - (a) *has the powers, privileges, rights and immunities of a committee under the “Parliamentary Privileges Act 1891”;*
 - (b) *is to refer a matter, including an objection made under section 7 of the “Parliamentary Privileges Act 1891”, to the presiding officer for decision in a case where a committee is required to obtain a decision of the House;*
 - (c) *may order without summons a member or officer of either House to appear and give evidence or produce documents;*

- (d) *may be assisted by parliamentary and Commission officers;*
 - (e) *cannot delegate the performance of a function that cannot be delegated by a committee of a House;*
 - (f) *is to report to the presiding officer and the Privileges Committee when so requested or at predetermined intervals or both.*
- (4) *The Commission is to act in conformity with the “Parliamentary Privileges Act 1891”.*
 - (5) *An inquiry cannot be discontinued by direction of the presiding officer or the Privileges Committee unless the Commission consents.*
 - (6) *A recommendation under section 43(1) is to be contained in a report (whether interim or final) to the presiding officer and the Privileges Committee and, either in substitution for, or in addition to the recommendations that may be made under that subsection, may recommend that a member be expelled or an officer be removed under section 35 of the “Constitution Act 1889”.*
 - (7) *The presiding officer must present to the House a report provided under subsection (6), in the form in which it was received, on the sitting day next following its receipt.*
 - (8) *The Commission must not make a recommendation to an independent agency under section 43(4) unless expressly authorised by resolution of the House.*

[7] It is to be noted that section 27A draws a distinction between allegations of “misconduct” and allegations of “serious misconduct”. Both of those terms are defined in section 3 of the Act. Misconduct has the meaning provided for in section 4 of the Act, and serious misconduct is defined to mean misconduct of the kind described in sub-sections 4(a), (b) or (c). Section 4 of the Act is reproduced below.²

4. “Misconduct”, meaning of

Misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to*

obtain a benefit for himself or herself or for another person or to cause a detriment to any person;

(c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or*

(d) *a public officer engages in conduct that —*

(i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*

(ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*

(iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*

(iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute —

(v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*

(vi) *a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

[8] The effect of sections 27A and 27B of the Act is to provide for a process whereby allegations of misconduct against Members of Parliament may be investigated by the Commission on behalf of the Privileges Committee. However, those sections only relate to allegations that do not fall within the categories of serious misconduct. The Act makes no specific provision in

respect of allegations of serious misconduct against Members of Parliament and parliamentary officers.

- [9] Sub-section 3(2) of the Act³ provides that nothing in the Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* (“the Privileges Act”). Pursuant to the Privileges Act, the Legislative Council and the Legislative Assembly and their Members and committees have and may exercise the privileges, immunities and powers provided by the Privileges Act, and, to the extent that they are not inconsistent with that Act, the privileges, immunities and powers of the House of Commons of the Parliament of the United Kingdom and its Members and committees as at 1 January 1989. One of the immunities covered is that which provides that the proceedings of Parliament are privileged and cannot be questioned in any court or place outside Parliament. Thus, absent sections 27A and 27B of the Act, it would not be possible for the Commission to investigate alleged misconduct by Members of Parliament where to do so would require examination of the proceedings of Parliament, including parliamentary committees.
- [10] Section 27B of the Act avoids conflict with the preservation of parliamentary privilege in sub-section 3(2) by providing that the Commission can be directed to carry out an inquiry on behalf of the Privileges Committee of either House of Parliament. Thus any such inquiry would be a parliamentary proceeding. By this means the Act preserves privilege but permits Parliament to refer allegations of misconduct to the Commission for independent investigation.
- [11] Somewhat curiously, however, in only permitting the Commission to act on behalf of the Privileges Committees in respect of allegations of simple misconduct, the Act begs the question of what is to be done in cases of serious misconduct involving Members of Parliament. At face value it would seem unlikely that Parliament intended that it could call upon the Commission to conduct an inquiry where the allegation was of simple misconduct, but could not do so where the allegation was of a more serious type involving possible corrupt or criminal conduct. The desirability of ensuring that allegations of serious misconduct are independently investigated, and are seen to be so, is self-apparent. It is not at all clear why this distinction has been made.
- [12] What does seem clear is that Parliament intended that allegations of serious misconduct could be investigated by the Commission without direction from Parliament. This interpretation is lent support by the fact that the distinction is only made in section 27A of the Act and in the context of requiring the Commission to refer allegations of misconduct, but not serious misconduct, to the presiding officer of the relevant House.
- [13] The problem which would arise in a case of alleged serious misconduct by a Member of Parliament or parliamentary officer is that whilst the Commission could conduct an investigation that could not intrude upon any area of inquiry subject to the protection of parliamentary privilege. Accordingly, if it were necessary to rely upon parliamentary documents or other material or information protected by parliamentary privilege to establish misconduct, the

Commission would be unable to do so. And the Act is silent about what should happen in that situation.

- [14] The distinction between misconduct and serious misconduct also raises a practical problem. At the time an allegation is initially under consideration there may be little if any evidence yet obtained. That is the purpose of conducting an inquiry. Determining the precise nature and seriousness of the alleged conduct at an early stage may be difficult. Whilst it may be clear that the allegation would fall within one of the limbs of section 4 of the Act if made out by evidence, it may be less easy to say that it would fall within sub-section (d) but not sub-sections (a), (b) and (c) of the Act.
- [15] Both from a practical and philosophical perspective there appear to be good reasons to remove the distinction in section 27A of the Act. This could be easily achieved by amending that section to remove the words “not being serious misconduct” in the second line. The effect would be that the Commission would be obliged to refer all allegations to a presiding officer of Parliament. This would then enable, but not oblige, Parliament to direct the Commission to conduct an inquiry on its behalf. Such an inquiry could be conducted in any case of misconduct, both ordinary and serious. Parliamentary privilege would still be protected, as any such inquiry would be undertaken by the Commission on behalf of the relevant Privileges Committee and sub-section 3(2) of the Act would continue to apply.

1.2 Opinions of Misconduct: Standard of Proof

- [16] The Commission fully appreciates that any expression of opinion by it in a published report that a public officer has engaged in misconduct is serious. The publication of such an opinion (or, indeed, even an adverse assessment not amounting to misconduct, as defined in section 4 of the Act) against a public officer, or any other person, may have serious consequences for them and their reputation.
- [17] The Commission is careful to bear these matters in mind, when forming opinions, when conducting inquiries and when publishing the results of its investigations.
- [18] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.
- [19] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a mere mechanical comparison of probabilities, without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact, to at least that degree.⁴

[20] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the inquiry. Any expression of opinion in this report is so founded.

1.3 Nature of the Inquiry: The Present Case

[21] On 28 August 2007 the Commission referred allegations relating to Members of the Legislative Assembly to the Speaker in accordance with section 27A(1)(a) of the Act.⁵ In accordance with section 27B(1)(a) of the Act the allegations were then referred to the Privileges Committee of the Legislative Assembly.

[22] On 21 September 2007 the Privileges Committee resolved to carry out its own inquiry and, in accordance with sub-section 27B(2) of the Act, directed the Commission to act on its behalf in that regard.⁶ This is the first time that the Commission has conducted an inquiry on behalf of the Privileges Committee pursuant to the provision in this sub-section.

[23] Such an inquiry is significantly different from ordinary hearings of the Commission. In particular, rather than relying on the powers provided in the Act, the Commission had the powers, privileges, rights and immunities of a committee under the Privileges Act. In the Commission's view, an inquiry conducted by it on behalf of the Privileges Committee in this way, is a "proceeding in Parliament" for the purposes of parliamentary privilege.

[24] The Clerk of the Legislative Assembly, Mr Peter John McHugh, agreed to be present and to be available in the course of the proceedings for consultation by the Commission on matters going to the customs, practices and procedures of the Legislative Assembly. Mr McHugh was present at a number of the Commission hearings in relation to this inquiry and his willingness to assist in this regard is gratefully acknowledged.

[25] The allegations that were the subject of inquiry in this case related to:

- (1) the agreement of Mr John Robert Quigley MLA and Mr Benjamin (Ben) Sana Wyatt MLA in their capacity as members of the Public Accounts Committee of the Legislative Assembly to take action in relation to a proposed inquiry into the audit function of the Office of State Revenue (OSR) concerning payroll tax following requests by lobbyists; and
- (2) the actions of Mr John Edwin McGrath MLA and others in their capacity as Members of the Legislative Assembly following the approaches of lobbyists in respect of a proposal for an independent review of road safety.

[26] In this case, prior to the allegations being referred to Parliament, the Commission had available to it some evidence by way of recorded telephone calls and emails that had been gathered in respect of other investigations. It

was thus possible on this occasion to formulate the allegations as ones of misconduct, but not serious misconduct, within the terms of section 27A of the Act. The allegations did not assume any facts and the purpose of the inquiry was to determine whether what was referred to in the allegations had occurred. In particular, it was not assumed that there had been an agreement as referred to in (1) above, rather the inquiry sought to determine whether there had been any such agreement.

[27] The hearings in this matter were conducted in private. The integrity of the inquiry would have been compromised had the evidence available to the Commission, and witnesses responses to it, been public knowledge whilst the inquiry was still ongoing. Since those hearings were conducted on behalf of the Privileges Committee it will be a matter for it to determine the extent to which the evidence upon which this report is based is made public. It is noted that newspaper articles appeared in *The West Australian* on 20 and 21 September 2007 which reported that the Commission had referred allegations to the Privileges Committee relating to contact between Mr Brian Thomas Burke and two Australian Labor Party (ALP) Members and one Liberal Party (LIB) Member of Parliament. That information was not disclosed by the Commission.

[28] Before witnesses appeared at Commission hearings they were provided with a statement of the scope and purpose of the hearings which referred to the allegations. Witnesses were advised that they could have legal representation at the hearings and some witnesses availed themselves of that opportunity. The purpose of the hearings was to obtain evidence to determine whether the allegations were correct. The hearings formed only one part of the investigation. Interviews with some witnesses were also conducted. Documents were also obtained from various sources.

[29] Hearings were held between 12 and 14 December 2007. The following witnesses were called to give evidence on oath:

- Dr Steven Caldwell Thomas MLA;
- Mr Donald Terrence Redman MLA;
- Mr Peter Bruce Watson MLA;
- Mr Anthony David McRae MLA;
- Mr John Robert Quigley MLA;
- Mr Benjamin Sana Wyatt MLA;
- Mr John Biase D'Orazio MLA;
- Mr Julian Fletcher Grill;
- Mr Walter Robert Maumill;
- Mr John Edwin McGrath MLA;
- Mr John Patrick Theodorsen;
- The Hon John Charles Kobelke MLA;
- Mr Brian Thomas Burke; and
- Ms Elizabeth Mary Kerr.

In addition, a number of witnesses were interviewed, namely:

- Mr Simon St John Kennedy;
- Ms Nicole Heilder-Burgess;
- Ms Elizabeth Mary Kerr;
- Mr Anthony Robert Ince; and
- Mr Glenn Reginald Secco.

Documents were obtained from Public Accounts Committee records and from witnesses. As previously noted, the Commission also had access to lawfully recorded material and emails, and documents.

- [30] In this report some evidence is particularly referred to as being relevant or cogent. Clearly it would not be practical to refer to every item of evidence in a report of this nature. It should not be thought that because a witness, document or particular testimony is not specifically referred to in this report it has not been taken into account.
- [31] Following the Commission hearings, additional documents were provided by some of the witnesses, in particular by Mr Theodorsen and Mr Secco. Those documents were also taken into account in preparing this report.
- [32] Following his appearance before the Commission in a private hearing on 12 December 2007, Mr Quigley wrote a four and a half-page letter to the Commission the following day, and a further three-page letter on 14 December 2007. On 19 March 2008 Mr Quigley wrote advising that there were certain aspects of the Commission's conduct that he was referring to the Privileges Committee "for investigation" and for that purpose sought access to the transcript of his evidence. He requested an answer to that application no later than 4.00 p.m. that day. Following consultation with the Hon Fred Riebeling, Speaker of the Legislative Assembly, the Commission wrote to Mr Quigley that afternoon indicating that a copy of the transcript of his evidence would be provided to him on condition he not disclose it to anyone other than the Privileges Committee.
- [33] By letter dated 20 March 2008 the Commission notified Mr Quigley that it had prepared its draft report and gave him notice of matters it has proposed to include in it which he may consider adverse to him. Mr Quigley was invited to make representations about those matters by Friday 4 April 2008.
- [34] On 26 and 27 March Mr Quigley and his wife (also a lawyer) attended the Commission offices and were given access to all the investigation material, for the purpose of preparing his representations. Mr Quigley's conduct on those occasions is the subject of a letter from the Commissioner, the Hon Len Roberts-Smith RFD QC, to the Speaker on 27 March 2008.
- [35] By letter to the Commission dated 26 March 2008 Mr Quigley made what he termed an "official complaint" against a Commission investigator. This was about the way the investigator had asked a particular question of a witness. Again Mr Quigley said he intended to raise the matter in Parliament as a

breach of privilege and “likely” a contempt of the Parliament. On 27 March 2008 the Commission notified the Parliamentary Inspector of the Corruption and Crime Commission, Mr Malcolm McCusker AO QC, of the allegation and that it was conducting a preliminary investigation into it, in accordance with section 32 of the Act. By letter dated 11 April 2008 the Commission advised the Parliamentary Inspector the result of the preliminary investigation was that no “misconduct” was shown, and forwarded the investigation file to him.

- [36] By letter to the Commission dated 27 March 2008 Mr Quigley raised certain matters which he said meant he would not be able to provide his representations by 4 April. He requested an extension of time for a further 21 days beyond that. The Commission extended the time by 14 days, to 18 April.
- [37] On 28 March 2008 Mr Quigley faxed to the Commission a four and a half-page letter setting out a range of comments and arguments about evidentiary matters and aspects of the proposed content of the inquiry report.
- [38] By letter dated 18 April 2008 (copied to the Speaker) Mr Quigley sought an extension of time by a further two weeks to provide his representations. The Commission extended the time to Friday 2 May 2008. At approximately 4.20 p.m. that afternoon Mr Quigley telephoned the Commission and advised he would be unable to meet the 5.00 p.m. deadline that day, but would provide his representations the following Monday. Mr Quigley’s 24 pages of representations were received by facsimile on the morning of Monday 5 May 2008.
- [39] All of the matters advanced by Mr Quigley as bearing upon the evidence, any assessment of the evidence by the Commission and any opinion which might be reached, have been considered. Some of them have resulted in changes to the draft report, although none of these were material to the assessments made or opinion reached. It is not proposed to deal specifically in this report with all the issues raised or allegations made by Mr Quigley. However, some of them do require some brief comment.
- [40] Mr Quigley complains the Commission’s “findings” are ultra vires the reference by the Privileges Committee. First he says the words of the general scope and purpose of the Commission’s investigation do not “emanate from” the Privileges Committee, and that (or perhaps because) the Privileges Committee was not given any evidentiary material to support the allegation against him. Mr Quigley says that at the Commission hearing he –

... took an objection to the allegation pointing out that it was not true and that the Commission knew it did not have any evidence to support the allegation.

- [41] The “general scope and purpose” of the inquiry insofar as it related to Mr Quigley, was –

... to deal with allegations of misconduct in respect of the following Members of the Legislative Assembly –

*Mr Ben Wyatt MLA and
Mr John Quigley MLA,*

and, in so dealing, to make an assessment and form an opinion as to whether the misconduct alleged has or may have occurred or is or may be occurring and to report to the presiding officer and the Procedure and Privileges Committee of the Legislative Assembly.

Such allegations relate to –

the agreement of Messrs Quigley and Wyatt, in their capacity as members of the Public Accounts Committee of the Legislative Assembly, to take action in relation to a proposed inquiry into the audit function of the Office of State Revenue concerning payroll tax, following requests by lobbyists.

[42] This complaint is misconceived. Section 27A(1) of the Act requires “allegations” to be referred to the presiding officer. It is the inquiry into the allegation which is then conducted by the Commission on behalf of the Privileges Committee, when directed to do so under section 27B(2) of the Act. The allegations here related to the agreement by Mr Quigley to take certain action. There was evidence which on the face of it showed Mr Quigley’s agreement. Part of the purpose of the inquiry was to determine whether or not there had in fact been agreement, and if so, to do what, and whether that constituted misconduct. As this report shows, the Commission’s opinion on the evidence is that Mr Quigley did profess to agree to do what Mr Burke was asking of him, but he had no intention of actually doing it – and indeed, acted to the contrary.

[43] Mr Quigley complains that Commissioner Roberts-Smith and the Commission are biased against him and have prejudged the matter. Mr Quigley claims that the words “the agreement of Messrs Quigley and Wyatt ...” in the “general scope and purpose” indicate prejudgment that there was an agreement. This point has been addressed above. Further, as Mr Quigley acknowledges, the Commissioner stated at the commencement of the hearing –

The Commission has no view whether or not there was such an agreement or, if there was, what the terms of that agreement were. To investigate claims, however, it is of course necessary to have an understanding of what the allegations are.⁷

and that any opinions arrived at –

... will be opinions which are founded entirely on the evidence which is adduced before the Commission.⁸

[44] Mr Quigley complains Commissioner Roberts-Smith should have disqualified himself from this inquiry because there is a reasonable perception he is biased against Mr Quigley. He says (in brief) this is because of:

- Mr Quigley’s public demand that Commissioner Roberts-Smith apologise to Mr Andrew Mallard and his family as one of the judges on the Court of Criminal Appeal which dismissed Mr Mallard’s appeal against conviction;
- Mr Quigley’s statements in Parliament, that in relation to what he described as the “D’Orazio report”, the Commission had engaged in activity not permitted by the Act and which may have constituted an offence; and
- Mr Quigley’s parliamentary statements supporting Mr McCusker, Parliamentary Inspector of the Corruption and Crime Commission, and the fact he presented an opinion from Mr David Grace QC “who opined that Mr McCusker was correct and the Commissioner was wrong”.

Mr Quigley asserts that

I believe these public clashes with me support my claim of reasonable perception of bias

and says that is also demonstrated from the Commission’s approach to the examination of the issues and evidence.

[45] There are numerous misstatements of fact in Mr Quigley’s contentions elaborating upon the foregoing claims. It is not necessary to deal with them here. Whether or not the Commission’s approach to the examination of the issues and evidence demonstrates bias against Mr Quigley (and that seems to be an allegation of actual bias, not perceived bias) may be judged from this report. That aside, what is notable about Mr Quigley’s claim that circumstances give rise to a reasonable apprehension of bias, is that all the circumstances on which he relies are his own conduct, not that of the Commissioner. Mr Quigley refers to “public clashes”, but points to nothing done or said by the Commissioner in response to his public criticisms, nor otherwise. None of the matters to which Mr Quigley refers could give rise to a reasonable perception that the Commissioner or the Commission is biased against him and that they have prejudged the outcome of this inquiry.

[46] Mr Burke is not a public officer and the Commission therefore has no jurisdiction to express any opinion whether or not he has engaged in “misconduct”, and does not do so in this report. Nor does the Commission make any adverse comment about Mr Burke in the report. Nonetheless, as it was proposed to include reference to evidence which Mr Burke might consider reflects adversely on him, the Commission wrote to him on 20 March 2008, drawing the particular matters to his attention and advising that it considered procedural fairness required that he be given a reasonable opportunity to make representations about those matters. Mr Burke was invited to do so by 4 April 2008 and was advised that he and his legal adviser could inspect the transcript of hearings before the Commission and evidentiary material going to the matters identified and any others about which he might wish to make

representations. Those representations were made in a nine-page letter from Fairweather and Lemonis, Mr Burke's lawyers, dated 7 April 2008. The Commission has had regard to them.

- [47] Some of the matters raised on behalf of Mr Burke have resulted in some amendment of the draft report. Again it is not necessary to deal specifically with them, but some brief comment is required.
- [48] Fairweather and Lemonis state that Mr Burke did not have an opportunity to rebut particular matters stated by Mr Quigley. With respect, this seems to betray a fundamental misunderstanding of the nature of investigative proceedings. It is not necessary, and often positively undesirable, to put one person's evidence at investigative hearings to another in order to give them an opportunity to comment on it. What is important is to provide an opportunity for the person to give a full account of their memory of the relevant events, and Mr Burke had that opportunity. It is, of course, only in a trial context that it is necessary to put matters that form part of the case of a party to witnesses for the other party. There are no parties in investigative hearings and there is no case to prove. Furthermore the process could be potentially endless. The only circumstance which requires an opportunity to be given to comment on the evidence of another witness is if that evidence is to be quoted or relied on either to make an adverse opinion or in a report that could be viewed as reflecting adversely on the individual. To the extent that a witness may say something that could be viewed as reflecting adversely on a person, an opportunity to rebut or deny that evidence is adequately afforded by the present process.
- [49] Fairweather and Lemonis also assert that aspects of Mr Quigley's evidence are false and that his illness is such as to make his recollection of events unreliable. It is, of course, appropriate to take into account possible inconsistencies and the likely affect of the medical treatment. However, whilst Mr Quigley sometimes expressed himself in vivid terms at the hearing, the Commission does not accept that his evidence can be dismissed as wholly unreliable. The Commission accepts that it is important not to include statements that are gratuitously offensive to Mr Burke, but it is also important to ensure that in fairness to Mr Quigley, the report accurately represents what he says occurred. In regard to the particular passages complained of, it would be difficult (if not impossible) to summarise Mr Quigley's evidence, and any reader of the report would need to read it for themselves in order to properly understand the conclusions reached. In these circumstances any offence caused to Mr Burke is incidental and not gratuitous. It is necessary to include the passages in order to accurately and fairly convey what Mr Quigley says occurred. To the extent that Mr Burke asserts that the colourful way Mr Quigley expressed himself is relevant in assessing his credibility, the best way to convey this factor is to quote Mr Quigley. Mr Burke's concerns have been addressed by including a reference to his denial of the truth of what Mr Quigley says, where that is so.

[50] As is apparent from the allegations, the inquiry related to two distinct matters. However, it is convenient to deal with them together because they involve a number of the same people and similar issues. The first issue relates to the Public Accounts Committee of the Legislative Assembly. The second issue relates to a matter raised in the Legislative Assembly, relating to road safety.

CHAPTER TWO

THE PUBLIC ACCOUNTS COMMITTEE MATTER

2.1 Background

- [51] As is well known, Mr Burke is a former Premier of this State. Mr Grill is a former Minister. For some years they have offered their services as consultants to people dealing with local government or the State Government. In general, clients enter into a retainer arrangement with a company controlled by Mr Grill, though such an arrangement suffices to secure the services of both men. Mr Burke and Mr Grill have an informal business arrangement whereby income earned from joint clients, and paid to Mr Grill's company, is split between them in equal amounts.⁹
- [52] In June 2005 Fehily Loaring Pty Ltd ("Fehily Loaring"), a firm of indirect taxation consultants, approached Mr Burke with a proposal that he be retained to act on behalf of one of Fehily Loaring's clients. The proposal was contained in an email from Mr Ince of Fehily Loaring to Mr Burke on 10 June 2005.¹⁰ The email stated that the client had "an issue with OSR" and attached a briefing paper.¹¹ The email also stated "If you think you may be able to assist, we are keen to meet with you ASAP".
- [53] The briefing paper stated that the client had been investigated by OSR in November 2000 and that the investigation related to payroll tax. At that stage OSR had concluded that, whilst some taxable wages were understated, there was no adjustment required because the client was still below the payroll tax threshold. The client was advised of a further audit in December 2004. A potential issue that arose at this time was whether OSR would take the view that employees of different entities controlled by the client should be grouped together for payroll tax purposes. Fehily Loaring had been engaged at this point and had advised that it was likely that the entities would be grouped but that "OSR policy was that there would be no retrospective assessment because of the previous investigation".¹²
- [54] The briefing paper went on to say that OSR had a different view as to whether retrospective assessments could be raised in this case. In particular, OSR had stated that the grouping issue had not been addressed in the 2000 audit because the investigations officer had been informed that other related entities did not pay wages. An attached email from OSR stated that the case did not satisfy the requirements of the policy against retrospective assessments because there was insufficient evidence that the information supplied to the investigations officer in 2000 was complete or correct.
- [55] The briefing paper then noted that an assessment had not yet issued and that it was unlikely that it would be changed once issued. For that reason it was said that "we need to resolve this matter before any assessment issues".¹³ The options that were being considered were "approaches to either the State Ombudsman or representations to the Treasurer and/or the local Member".¹⁴

The briefing paper then stated that:

We are seeking your assistance as to:

1. *Whether or not you believe the client has the right to expect that there should be no retrospective assessment. I should note that the client was genuinely unaware of the grouping issue that they now find themselves confronted with.*
 2. *If so, to advise on the best course of action from here.*¹⁵
- [56] On 13 June 2005 Mr Burke sent an email to Mr Grill, attaching that from Mr Ince, and stating that he had spoken to Mr Ince and was waiting on mutually convenient meeting arrangements.¹⁶ It would appear that a meeting did take place later that day, as in the early afternoon Mr Grill sent an email confirming arrangements “that came out of our meeting today”.¹⁷ Mr Grill’s email stated that he and Mr Burke “would be interested in taking on the case” and that the proposed retainer fee was \$6000 per month plus GST. He said that it was expected that the matter would take two months to resolve and that the client was to nominate a success fee for the consideration of he and Mr Burke.
- [57] On 16 June 2005 Mr Ince sent an email to Mr Burke and Mr Grill confirming that the client had agreed to pay the retainer subject to it being limited to two months at that stage.¹⁸ A success fee of 5% of an expected potential payroll tax liability of about \$200,000 to \$250,000 was proposed¹⁹ (i.e. a success fee of between \$10,000 and \$12,500). Whilst “success” was not defined, it is reasonable to infer that it meant acceptance by OSR that a retrospective assessment would not issue. A more detailed statement of the circumstances was attached to the email.²⁰ In particular, it was stated that the client disputed that any incorrect information had been given to the OSR investigator in 2000 regarding whether wages were paid by related entities.
- [58] On 23 July 2005 Mr Burke sent an email to Mr Ince in which he said that he had briefed a number of Members of Parliament who had made representations to the Commissioner for State Taxation.²¹ These briefings and the conduct of the Members concerned were not the subject of this inquiry. The only reason to refer to this email is to show that Mr Burke considered that success for the client could be achieved by making approaches to Members of Parliament.
- [59] On 12 October 2005 Mr Ince sent an email to Mr Burke and Mr Grill advising that a meeting with OSR had not been successful and that OSR was “now preparing to do the audit and (presumably) issue the assessment”.²² Mr Burke then emailed Mr Grill saying “This is very disappointing if it is true”.²³ Mr Grill then made inquiries and confirmed that the only concession OSR would make was removing penalties associated with involuntary disclosure.²⁴ Mr Grill advised Mr Burke and sought his views as to the next step.²⁵
- [60] By email dated 12 October 2005 Mr Burke told Mr Grill that, as far as he could see, there were two courses of action.²⁶ The first was to do nothing further

and not charge the client anything. The second was to try to persuade a Member of Parliament from the Government and the Opposition to make joint personal representations to the Commissioner for State Taxation. He thought that the second possible course of action was “a faint hope”.²⁷ Mr Burke then concluded by saying “Of course, it is open to us to try to exact some penalty on the Office of State Revenue by trying to get a joint party attack on their position in this matter but I’m not sure where that will lead us”.²⁸

[61] On 14 October 2005 Mr Grill responded to Mr Burke, suggesting that it might be worthwhile arranging for a Member of the Opposition to start asking some parliamentary questions on the subject. Mr Grill said that he did not think “we could get a joint party attack up”.²⁹ Mr Burke replied on the same day saying “I do not think this is going anywhere. And I would need to be convinced that the parliamentary questions had an objective other than to embarrass the Government”.³⁰

[62] Later the same day Mr Grill sent an email to Mr Burke in which he stated “I am more than happy to run with a joint parliamentary enquiry (sic), if you think that we can get it up”. He went on to refer to his view that the Commissioner of State Taxation had “been particularly arrogant and that we are not going to get very far as mendicants. There is also the longer term. If he thinks he can shrug us off, with impugment (sic), at every turn, then he shall just continue to do so.”³¹ Mr Burke replied the next day in the following terms, “I would prefer to wait on John Quigley and see if the Public Accounts Committee might inquire into this”.³²

2.2 The Public Accounts Committee

[63] The Public Accounts Committee is a Standing Committee of the Legislative Assembly and may inquire into and report to the Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual Appropriation Bills and Loan Fund. Under the Legislative Assembly of the Parliament of Western Australia Standing Order 286, the Committee may –

- (1) *Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means.*
- (2) *Inquire into and report to the Assembly on any question which –*
 - (a) *it deems necessary to investigate;*
 - (b) *is referred to it by resolution of the Assembly;*

(c) *is referred to it by a Minister; or*

(d) *is referred to it by the Auditor General.*

(3) *Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine.*

(4) *Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.*³³

[64] At the commencement of each Parliament, the Speaker determines and tables a schedule showing the portfolio responsibilities for each standing committee. “Accordingly, on 30 March 2005 the Speaker tabled a schedule showing portfolio responsibilities for each of the standing committees appointed by the Legislative Assembly at the commencement of the thirty-seventh Parliament”.³⁴

The specific portfolio responsibilities of the Public Accounts Committee (identified in the schedule) are:

- *Premier*
- *Public Sector Management*
- *Federal Affairs*
- *Treasurer*
- *Government Enterprises*³⁵

[65] The Public Accounts Committee also has oversight responsibility for the Office of the Auditor General for Western Australia.³⁶ Like other committees under Standing Order 264,³⁷ the Public Accounts Committee has the power to summon witnesses and documents in relation to an inquiry it is conducting.

[66] In October 2005 the members of the Committee were Mr John Robert Quigley MLA (ALP), Mr Norman Richard Marlborough MLA (ALP), Mr Anthony David McRae MLA (ALP), Dr Steven Caldwell Thomas (LIB) and Mr Donald Terrence Redman MLA (NPA). Mr Quigley was the Chairman. The Committee generally meets on Wednesday mornings in weeks when the Legislative Assembly is sitting. It will also meet occasionally during non-sitting weeks.³⁸

[67] The normal process is that the principal research officer prepares a draft agenda which is distributed to members by the Friday before the Wednesday meeting. On the afternoon of the Tuesday before the meeting (that is, the day before the meeting) a final agenda is distributed to the members. Copies of any correspondence received are attached to the final agenda.³⁹

2.3 The Breakfast Meeting Between Mr Quigley and Mr Burke

[68] Mr Quigley gave evidence that he had been approached by Mr Burke whilst having breakfast at a restaurant in Scarborough one morning. Although Mr

Quigley could not recall the precise date, on the basis of subsequent email communications it is likely that this approach occurred between 14 and 18 October 2005. Mr Quigley said that it was his habit to attend the same restaurant each morning at about 7.45 a.m. to 8.00 a.m. Mr Quigley could not recall whether Mr Burke had telephoned him to ask whether he would be there, but suspected that he did as, he said, Mr Burke "is not a person who leaves anything to chance".⁴⁰

[69] Mr Quigley said that Mr Burke arrived alone and raised the topic of the Public Accounts Committee.

He came in and he said, "What are you doing on this Public Accounts?" And I said, "We're doing a very interesting thing. We're examining the audit process of local government, because I'm concerned that - you wouldn't have had things like Mr Spagnolo and everything got involved in Bassendean or Bayswater if there had been proper auditing of local government, not just tick and flick, but proper probity auditing of local government." He said, "Where is all this going," you know. "Who's interested?" Then he said to me, "You see," - he said, "I'll tell you an interesting thing." He says, "It's all right for that Ripper to keep on taxing Western Australia at such a level he's taxing, but you've got to bring to account the tax inspectors. You have an examination of the tax inspectors and a public inquiry into the tax inspectors who were enforcing his unconscionably high regime, you will bring a lot of political kudos to yourself in public," and I'm going, "Oh yeah." I know how Brian practises on people. There's always an agenda.⁴¹

[70] After a short time another man joined them. Mr Quigley said that Mr Burke introduced the man and described him as being "a mate of mine from the surf club".⁴² Mr Quigley could not recall the man's name but did say that he did not recognise the man as having ever attended either of the local surf clubs of which he is patron. He noted that the man arrived on the hour or half-hour which made him suspect that he had been told to arrive at that time. Mr Quigley said that Mr Burke then explained that this man had a problem.

He then explains to me how he's one of these victims of the - I can remember him using the word "gestapo". He explained to me that this honest businessman - I don't know if he had an accounting background, this bloke, or not, but this honest businessman had a number of businesses and the taxation Commissioner, or the people at the Taxation Office, had unfairly and improperly aggregated his businesses together to make them liable for payroll tax, because if you're under a certain level of employees you're not liable, and this is where the word "gestapo" came in, and these gestapo just entered his home and his business and took his computers and all the person information on them - just took them. "They're gestapo, John, they've got to be brought to heel." This conversation went on for a while, and would I do an inquiry and I said, "Well, this doesn't sound like" - I just kept on sort of listening to all of this...⁴³

[71] The conversation concluded with Mr Quigley telling Mr Burke to “send me a written submission”.⁴⁴ Mr Quigley said that in his view this type of business should not be done in coffee shops.⁴⁵ He said he also suspected that the “agenda” was to achieve some advantage for Mr Burke’s “mate”.⁴⁶ He said:

*... you get the Committee to even start looking at the matter, just start looking or deliberating the matter, and then you get the other side running down to the Taxation Office saying, "You're under investigation by the Parliament now. Slow down," because as I understood it - bits are coming back. As I understood it, no final notice of assessment had issued or no final determination on an appeal had issued.*⁴⁷

[72] When asked whether it was his perception that if there was an inquiry it would have the effect of being to the advantage of the people who were being assessed, Mr Quigley said that in his view “they would seek to use it in that way”.⁴⁸

[73] Whilst Mr Burke did not refer to the person with the problem as his client, Mr Quigley agreed that he knew that Mr Burke operated a lobbying business. He suspected that in urging an inquiry Mr Burke was acting in the interests of a client, though this was not expressly stated.

*... I would think that he would not be helping this person unless there was a dollar involved and that the word "friend from the surf club" was a euphemism for - - - a paying customer.*⁴⁹

[74] It is not clear whether the “mate” who was introduced to Mr Quigley on this occasion was Mr Ince. However, Mr Ince does recall attending a meeting with Mr Quigley, though his recollection was that Mr Grill was also in attendance.⁵⁰ Mr Ince said that there was discussion about what was suggested as being “a gross miscarriage of justice” and that the Public Accounts Committee should investigate.⁵¹ Mr Ince said he put the issue to Mr Quigley.

*And in his own inimitable style [he] was fairly upset that the Commissioner had seemed to be acting unilaterally or sort of with nobody to rein him in ... And suggested that it might be something that the Public, Public Accounts Committee would be interested in if I'd like to write a submission.*⁵²

Mr Ince also said:

*... it was really John saying this is what the Public Accounts Committee does and if the Commissioner of State Revenue is acting as if he's not really answerable to anybody then he's wrong, because he is answerable to Parliament and if he's acting outside of that then that's something that we'd be interested in hearing.*⁵³

[75] Mr Ince recalls that the end result of the meeting was that he was to make a written submission to the Public Accounts Committee, though he cannot recall

whose suggestion that was.⁵⁴ Mr Ince said that Mr Quigley suggested that this “was the sort of thing they’d be looking at. ... the inference was that it was something that the Committee would take on”.⁵⁵ Mr Ince said that in these circumstances he was surprised when the Public Accounts Committee decided not to pursue the matter when he did send in a submission. Mr Ince’s surprise stemmed from the fact that “John was on the Committee... he suggested that that was the sort of thing they’d be looking at”.⁵⁶

[76] Mr Ince was asked whether he got a reply from the Committee:

Ince: *I think yeah, we did get a reply, and it, and I can’t remember who it was from.*

Interviewer: *Yep.*

Ince: *But they basically said well we’re not interested.*

Interviewer: *Yeah. And did that surprise you?*

Ince: *It did.*

Interviewer: *Yeah?*

Ince: *A little bit.*

Interviewer: *Yeah.*

Ince: *But we then wrote back - - -*

Interviewer: *- - - Why, why did that surprise you? Is it because of what was discussed at the meeting and the sort of - - -*

Ince: *- - - Yeah. Well John was on the Committee.*

Interviewer: *Yeah.*

Ince: *And he’s – I forgot what, but I did supply what he was going to – he suggested that that was the sort of thing they’d be looking at.*

Interviewer: *Yeah.*

Ince: *I can’t remember, but he, the inference was that it was something that the Committee would take on.⁵⁷*

The Commission understands that by that last answer Mr Ince meant that, while he could not remember the actual words used by Mr Quigley, the inference was as he expressed it.

[77] Mr Burke could not recall a meeting with Mr Quigley at the restaurant in Scarborough, but accepted that there probably would have been such a meeting. Mr Burke said he thought it had been his idea to suggest that the Public Accounts Committee hold an inquiry. Mr Burke was asked what was the object of holding an inquiry.

What did you hope would be achieved if the Public Accounts Committee did hold an inquiry?---I thought the matter would be ventilated and if my surmise was correct the State Revenue Office might have some sort of guidelines or policy imposed on the way in which it treated people.

Was there also possibly a short-term benefit if an inquiry was held in that it might result in the Office of State Revenue deferring the issue of an assessment to (the client)? ---That might've been the case. I don't immediately recall. My impression of the State Revenue Office was that they didn't defer much for anything, but I might've thought that they'd defer it to the Parliament's Committee in consideration.⁵⁸

[78] Mr Burke was provided with an opportunity to comment on the evidence of Mr Quigley in respect of the meeting. It was submitted on his behalf that the assertion that the word "gestapo" was used should be rejected, that it is unlikely that Mr Burke would refer to a mate "from the surf club", since he has never been a member of such a club, and that the suggestion that Mr Ince's time of arrival had been pre-arranged is incorrect.

2.4 Mr Quigley's Actions Following the Meeting

[79] The breakfast meeting had concluded with Mr Quigley inviting Mr Burke or his client to send a written submission to the Public Accounts Committee. Given that Mr Quigley strongly suspected that this inquiry was intended to produce a private advantage for a client of Mr Burke, it would be expected that Mr Quigley would be very cautious about acting upon such a submission. Mr Quigley, indeed, said that, in his view:

So he has put this improper, not improper from his point, because he is not a public officer, he's entitled - members of the public are entitled to put anything to a public officer; so he has put this to me, that's not improper. It's improper if I act on it or pick it up or do anything with it; so I've said, "write in."

But in saying "write in" to him, were you meaning to suggest to him that his suggestion was worthy of consideration?---No. I was just saying the next move, put the ball back on the other side of the net, write in.⁵⁹

[80] It would appear odd that Mr Quigley would tell Mr Burke to write in suggesting an inquiry if he had no intention of acting upon such a suggestion. In fact, he says that he went so far as to discuss the matter with the principal research

officer to the committee, Ms Liz Kerr, and to confirm his view that such an inquiry would be inappropriate. He said:

... so I approached her, and I didn't mention Brian Burke to her, because I didn't want to create political controversy for myself, so I approached Liz Kerr and said to Liz, "I believe - I've been approached by a bloke," - I can't even tell you his name, sir, it's of no consequence to me. "I've been approached by a bloke who will be writing in seeking to have the Public Accounts Committee, one of - having me or someone propose to the Public Accounts Committee an inquiry into these tax inspectors." I know this says "audit process" - I don't know if it's audit process or tax inspectors, whatever. "Liz," I said, "it worries me, it doesn't sound like a matter for the Public Accounts Committee," because we were looking at things like - we were looking at like Federal/State relations on infrastructure programs and the inter-governmental agreement on the GST. If you have a look at our reports, it's nothing to do with any singular citizen's affairs, it's to do with - I'm not trying to blow myself up here, but weighty matters of public administration, not some guy's gripe against the tax inspectors. So I said to Liz, "It doesn't sound like the sort of matter that the Public Accounts Committee have been looking at."⁶⁰

- [81] This conversation occurred in anticipation of any written submission being received, Mr Quigley said. In fact when a letter did arrive and was later considered by the Public Accounts Committee, Mr Quigley was not in attendance because he had been diagnosed with cancer and was undergoing chemotherapy. However, by that time Mr Quigley said that he had already effectively ensured that the Public Accounts committee would not agree to hold any inquiry on this issue.

... I directed her to draw the appropriate letter to advise the person - this is all in advance of a letter coming in. When the letter comes in, draw the appropriate letter to flick him straight off down to the Ombudsman. I was absolutely determined that the matter would not come on the agenda for consideration, because I didn't want anyone to say at any stage there was a matter that the Committee even deliberated, let alone proposed for deliberation. It was going to be just chopped off at the knees.⁶¹

- [82] Ms Kerr gave evidence that she could recall a discussion with Mr Quigley regarding the issue, however, her account differs in a number of respects from that given by Mr Quigley. Ms Kerr says that she met with Mr Quigley the day before the Public Accounts Committee meeting of 23 November 2005. This was a regular meeting with the Chairman to discuss the agenda for the meeting. The letter from Fehily Loaring had been received on 21 November 2005. They discussed the letter and Ms Kerr said:

I recall advising him that I believed that the request was outside the scope of the Public Accounts Committee and that it would be better

*dealt with by the Ombudsman. ... Because it seemed to be concerned with administrative practices of a Government department. It wasn't really what the Public Accounts Committee is there to do.*⁶²

- [83] Ms Kerr said that Mr Quigley agreed with her. When asked whether it could have been Mr Quigley who first expressed the view at this meeting that the matter was not suitable for an inquiry, Ms Kerr said "I couldn't say no; he may have, but I'm not sure".⁶³ Ms Kerr said Mr Quigley asked her to convey his view on the matter to the meeting as he was not going to be present.
- [84] When asked whether Mr Quigley had given any indication that he was aware in advance that this submission was going to be made Ms Kerr said, "No".⁶⁴ When asked whether he told her that approaches had been made to him in this regard, she said "No, he didn't".⁶⁵ She confirmed that she was quite clear about this. When asked about the letter of response from the Public Accounts Committee to Fehily Loaring, Ms Kerr said this was prepared by her after the meeting of 23 November 2005 to reflect the resolution of Committee on that day.⁶⁶
- [85] In submissions to the Commission Mr Quigley has stated that his belief is that he travelled to Melbourne for medical treatment on 22 November 2005. For this reason he believes it is unlikely that he and Ms Kerr met as usual before the meeting. He does, however, have a recollection that he spoke to Ms Kerr by telephone on that day.

2.5 Subsequent Communication Between Mr Burke and Mr Quigley

- [86] Before any written submission was sent to the Public Accounts Committee there were a number of emails sent by Mr Burke to Mr Quigley. When asked about these emails Mr Quigley said that he does not use emails and never opens them.⁶⁷ He said that he leaves such matters to his staff and that was particularly so following his diagnosis with cancer on 1 August 2005. It is certainly correct that there are no emails in the possession of the Commission from Mr Quigley to Mr Burke. Nevertheless, it is important to take into account emails from Mr Burke as they reveal the course of events in the weeks that followed.
- [87] On 18 October 2005 Mr Burke sent an email to Mr Quigley attaching information about "the matter Julian and I would like to discuss with you at 3.00 p.m. on Thursday at Julian's unit". An attached document briefly summarised the payroll tax issues faced by the client and also stated "I should also state that Julian Grill, who asked me to look at this matter, is retained by (the client)".⁶⁸ There is no clear evidence as to whether the matter was discussed at Mr Grill's home.
- [88] On 25 October 2005 Mr Ince sent an email to Mr Burke and Mr Grill saying that OSR had requested information so that they could finalise their payroll tax

audit and that an assessment could be imminent. Mr Ince then asked, "Is there any hope left? I was wondering if there was any value in getting it into the public arena. Would this put any pressure on the Treasurer or would it have the opposite effect?"⁶⁹ Mr Burke responded a short time later and said "I am meeting with John Quigley later this week with a view to the Public Accounts Committee holding an inquiry into this case. John is the Chairman of this Committee and I have already provided him with a preliminary briefing. While you might think this is taking a sledge hammer to a nut, Julian and I do not intend to let this matter lie."⁷⁰ Mr Burke's email was copied to Mr Quigley.

- [89] On the following day, 26 October 2005, Mr Burke sent an email to Mr Ince saying that he had an appointment to meet Mr Quigley at 4.00 p.m. the next day at a restaurant in Scarborough and inviting Mr Ince to attend.⁷¹ The nominated restaurant was the same as that at which Mr Quigley said the breakfast meeting occurred, but Mr Quigley gave evidence that he can recall only the one meeting there with Mr Burke at which this matter was discussed. However, Mr Quigley said his recollection of events could well have been affected by the drugs he took as part of his treatment at that time and thereafter.⁷²
- [90] On 2 November 2005 Mr Burke sent an email to Mr Quigley asking for his thoughts in respect of a draft submission prepared by Mr Ince. The attached draft contained a number of examples of what were said to be inappropriate actions by OSR.⁷³
- [91] On 17 November 2005 Mr Ince sent an email to Mr Burke and Mr Grill in which he said that "John indicated he had a meeting on 23 November 2005. The submission will be finalised with the inclusion of one or two more examples and some names". Mr Ince then asked whether there were any comments and where he should send the hard copy.⁷⁴ Mr Burke responded later the same day providing the address of the Public Accounts Committee and saying "If you ring John Quigley on (number provided) he will discuss the covering letter with you".⁷⁵ Mr Quigley confirmed that the number was his but said he had not been contacted by Mr Ince to discuss the letter.⁷⁶
- [92] The reference by Mr Ince to Mr Quigley having indicated he had a meeting on 23 November would suggest that there had been some communication between them. The 23 November was in fact the date of the next meeting of the Public Accounts Committee. When shown the email of 17 November 2005 Mr Burke said he had a recollection of speaking to Mr Quigley in this regard.

*I can remember now speaking to Quigley and telling him that - first of all really asking him whether he'd speak to Mr Ince and then making arrangements to put them together.*⁷⁷

2.6 Letter from Fehily Loaring of 18 November 2005

- [93] A letter dated 18 November 2005 and signed by Mr Ince was sent to the Public Accounts Committee and received on 21 November 2005.⁷⁸ The letter was on

the letterhead of Fehily Loaring and attached the document that had previously been sent to Mr Burke and Mr Grill by Mr Ince and to Mr Quigley by Mr Burke for comment and setting out examples of what was said to be inappropriate actions by OSR.⁷⁹

- [94] The letter did not refer to the client by name. In fact the letter did not purport to be written on any person's instructions, rather it represented that the firm had a more general concern with the conduct of OSR and that such conduct warranted an investigation by the Public Accounts Committee. The letter was addressed to the Executive Officer of the Public Accounts Committee and noted that a copy had been sent to each of the members.
- [95] Mr Quigley said that at this time he was particularly unwell and all of his correspondence was being dealt with by his Electoral Office staff. Mr Quigley has no recollection of ever seeing the letter from Fehily Loaring. A copy does appear to have been sent to his Electoral Office and was forwarded under cover of a "with compliments" slip to the Public Accounts Committee's principal research officer by a member of Mr Quigley's office staff.⁸⁰
- [96] According to the usual practice this letter was included on the final agenda and copies were distributed to the members with that agenda. As has been noted earlier, Ms Kerr said that she discussed the matter with Mr Quigley the day before the meeting. She recalls the letter being discussed and Mr Quigley either expressing or agreeing with the view that this was not an appropriate matter to be the subject of an inquiry.

2.7 Meeting of the Public Accounts Committee of 23 November 2005

- [97] The meeting of the Public Accounts Committee on 23 November 2005 was attended by Mr Marlborough, Mr McRae, Mr Redman and Dr Thomas. Ms Kerr was also present. As anticipated, Mr Quigley was not present and he was noted as an apology. Mr Marlborough was Acting Chairman for this meeting.
- [98] Item 4 of the agenda was correspondence and Item 4.2 of the minutes refers to the letter from Fehily Loaring. In this regard the minutes state:

Letter dated 18 November 2005 from Tony Ince, Fehily Loaring Pty Ltd, regarding the Office of State Revenue.

Resolved, to respond to Tony Ince, Fehily Loaring Pty Ltd, advising him to contact the Ombudsman and consider making a submission to the State Review of Taxation.⁸¹

- [99] Ms Kerr says that there was not a lot of debate on this item and that the members agreed that it wasn't something they would be interested in. Ms Kerr said that there was some discussion regarding the State Review of Taxation and that Mr Ince could make a submission in that regard. This suggestion

arose for the first time at the meeting. Ms Kerr believed that she would have told the other members of Mr Quigley's views as expressed to her the previous day.⁸²

[100] Of the others present at the meeting, Dr Thomas, Mr Redman and Mr McRae gave evidence to the Commission.

Dr Thomas said:

My recollection of it was that it was raised as a piece of correspondence and somebody - and I think it might have been the then principal research officer, Liz Kerr, suggested to the Committee, I think, I might have named her inappropriately - somebody suggested that it wasn't an appropriate investigation for the Public Accounts Committee; I think it was Liz Kerr but I may be wrong with that, and should be put aside and I think that that's what occurred.⁸³

Mr Redman said:

... I don't recall this issue being brought up as a serious issue of investigation by the Committee.

Did you agree with the resolution that it shouldn't be investigated, but rather referred to the Ombudsman and to the State Review of Taxation?---Yes. Yes, there was no - I actually don't recall the deliberations about this particular matter, but in reading that now, that's probably a perfectly reasonable response from the Committee.⁸⁴

Mr McRae could not recall the matter being discussed at the meeting, but in respect of the minutes said:

The resolution to refer a correspondent to the Ombudsman is in my view a fairly typical way of dealing with somebody that's making a submission that relates to a complaint that they have around the administration of an act. ... And the second part relates to the policy review, so they're consistent with my memory of how things would operate.⁸⁵

Mr McRae also said that he had a memory of Mr Quigley raising the matter with him, though he could not recall whether this was before or after the 23 November 2005 meeting. He said:

I have a memory that at some stage we discussed a review, the possibility of conducting a review or an inquiry. I don't remember whether Mr Quigley said to me, "I've been approached." I just don't have that memory.

What did he say to you about it? Was he suggesting it was a good idea or - - -?---I think he was advancing the arguments as to why it

could be conducted. It was more an exploratory advocacy rather than saying, "We must do this." It was rather, "Here are some of the issues," as I recall it.⁸⁶

2.8 Letter from the Public Accounts Committee of 23 November 2005

[101] Given the resolution passed at the meeting a letter was prepared by Ms Kerr responding to Fehily Loaring.⁸⁷ As has previously been noted, Ms Kerr's evidence is that this letter was prepared following the meeting and to reflect what had been resolved.

[102] The letter stated:

The Committee considers that the matters raised in your correspondence may be more appropriately dealt with by the Parliamentary Commissioner for Administrative Investigations, or Ombudsman. We emphasise the Ombudsman's independent and impartial role in investigating complaints about Western Australian government departments, statutory authorities and local governments. As such, the Committee suggests you direct your concerns to the Ombudsman.

In addition, you might consider raising these issues with the State Tax Review, which is being coordinated by the Department of Treasury and Finance.

[103] Ms Kerr said that the fact that the letter included reference to the State Tax Review confirms that it was prepared after the meeting, and not before, because that suggestion was first made by one of the members present at the meeting.⁸⁸

[104] The letter bears the signature block of Mr Quigley as Chairman, but the letter was in fact signed by Mr Marlborough. Ms Kerr said that the appearance of Mr Quigley's name on the letter did not indicate that it had been prepared prior to the meeting, rather it was likely that this occurred because the signature block of Mr Quigley was part of the template used to create new letters and had not been changed on this occasion due to an oversight.⁸⁹

2.9 Further Attempts to Obtain an Inquiry

[105] On receipt of the letter from the Public Accounts Committee Mr Ince sent a copy to Mr Burke and Mr Grill on 28 November 2005 and asked "where to from here?"⁹⁰ Mr Grill responded in the following terms.

I am rather surprised by this, given our discussion with the Chairman of the Committee. Brian do you know what might have happened?⁹¹

[106] When Mr Grill was questioned about this email he said he could not recollect any discussions with Mr Quigley and doubted whether he had ever discussed anything with him. Mr Grill said it is possible that in using the word "our" he really meant "your" and that any discussions had been with Mr Burke. Mr Grill did have a recollection of being "a bit surprised that it hadn't been taken up".⁹²

[107] Mr Burke responded the same day and said that the Chairman (Mr Quigley) had been absent but that he intended speaking to Mr Marlborough about how the decision could be reviewed.⁹³ In a separate email at around the same time he told Mr Ince not to be too concerned and that he had "renewed our representations".⁹⁴

[108] On 1 December 2005 Mr Ince sent an email to Mr Burke and Mr Grill inquiring whether there had been any update on the "PAC situation". Mr Burke responded the same day saying:

*I have discussed matters with John Quigley and Norm Marlborough and am now awaiting their proposed action.*⁹⁵

[109] Mr Burke said in evidence that he could recall speaking to Mr Quigley and Mr Marlborough. He said:

I don't recall exactly, but I think I spoke to him and to Quigley and just said that I thought that they were wrong.

Separately or together?---No, it would have been separate. I can't remember, but it would have been separately. I don't recall meeting them together.

*Did it extend beyond that, saying, "I don't agree with you"? Did you give reasons?---I think - Mr Hall, I think I would have gone into the - into the reasons to some degree and probably expressed myself forcefully. I don't know, but I would have said to them, "Look, you haven't done this properly," or, "This is wrong" et cetera.*⁹⁶

[110] Mr Quigley said that he could recall a discussion with Mr Burke that occurred in the driveway of his (Mr Quigley's) home.

... I was standing there just vacantly looking at the horizon before I went in when a white car - I don't know what make, it wasn't one of his flash Mercs - wheeled into my drive, nearly ran over my toes, sir. I was shocked. I looked and then the power windows started coming down and then there was Mr Burke in a pair of aviator sunglasses and he looked out of the window and said, "You're not much of a bloke, are you?" and I said, "What's going on, Brian?" He said, "We make you the Chairman of the Public Accounts Committee, we ask you to do a job and the first thing is is you knock us back and say no. So this is the next discussion, and I'm looking in the car and I can see Norm sitting - Norm Marlborough, that is, sitting in the passenger seat. ...

Then I've said, "I didn't do anything, Brian." This is how you never say no; don't get up his nose because you don't know what's going to happen underneath the surface. I said, "I didn't - what are you talking about?" He said, "Asked you to do one job for my mate on this taxation job and you write back and said no and sent him to the bloody useless Ombudsman." I said, "Excuse me, I did no such thing. Mr Marlborough did that and he's sitting right next to you."

He says, "Don't give me that tripe." He said, "Norm didn't know anything about this. He just signed the letter. You did this." And then he said, "What are we going to do about it?" and I said, "Nothing. The matter is with the Ombudsman." He said, "No, there's got to be an inquiry." I said, "There can't, it's not right," and then Norm said - I don't know if it was Norm or Brian said, "Now, listen, here's what we do. You have an inquiry into the processes of the State Taxation Office as to how they operate," and then I remember Norm said, "And they're doing something like this in the Senate where John Faulkner, Senator John Faulkner really beats up on the State Taxation Office; gets on TV, mate, is a real people's hero because of his attacks on the taxation man; so you do it - you just don't - you just look generally at that, John. This is what - this is how you go forward." And I said, "This is not - this is all nonsense," and he said, "No, no, no," and I can't remember whether it was Norm or Brian said to me, because I was pretty crook, they said to me, "No, what we're going to do is we have a look at the processes of the State Taxation Office but you examine it through the prism of this bloke's affairs. ..."

My recollection is I said to him, I said it to him, I'm sure it was on this occasion, with all apologies to Gertrude Stein, "A turd by any other name will stink the same," meaning just to disguise it as a general inquiry, but to look at it through the prism of this guy's affairs is off and would readily be seen to stink. Norm said, "No, mate, no; you look at it like the Senate is looking at it," and I said, "Well, you go away and look at all the precedents, Norm, and you bring all those to me and you work all that up, and I'll have another look at it." That was a way of not saying, "Nick off," and the idea of Mr Marlborough, Norm Marlborough, if you know him, going away to ferret out precedents on all this sort of stuff was just off into the, off into the never-never; and that was the conversation I had with Mr Burke at that time.⁹⁷

- [111] In submissions made on behalf of Mr Burke he denied that a conversation as described by Mr Quigley had occurred.
- [112] On 20 December 2005 Mr Burke sent an email to Mr Grill in which he stated that he had spoken to Mr Quigley that day and that Mr Quigley had said that he would "bring the Public Accounts Committee inquiry back on line in the New Year".⁹⁸ An email in similar terms was sent to Mr Ince.⁹⁹ Mr Quigley said in evidence that he had said nothing to Mr Burke at this time that would give cause for believing that the matter would be brought back before the Public Accounts Committee.¹⁰⁰ However, whilst it is possible Mr Burke might have

wished to present an overly positive view to the client, there is no obvious reason why he would wish to deceive Mr Grill.

[113] On 3 February 2006 Mr Ince asked by email for an update as to whether the Public Accounts Committee was going to take the matter up notwithstanding its initial rejection. Mr Burke responded the same day advising that "Parliament will not meet until March but John Quigley will call you today".¹⁰¹

[114] The following telephone conversation between Mr Burke and Mr Quigley occurred on 3 February 2006.

Burke: *John, uhm, mate, I'm really in the shit about this fuckin' payroll tax thing.*

Quigley: *Okay.*

Burke: *Can you speak to Tony Ince? You see mate, if they issue an assessment*

Quigley: *Yeah.*

Burke: *that makes it much more difficult for our people*

Quigley: *Yep.*

Burke: *So, if I gave you Tony Ince's number.*

Quigley: *Give it to me now (the number is then provided). ...*

Burke: *Mate, I've, I've lost a lot of face over this.*

Quigley: *Okay.*

Burke: *I really do need to get this Committee just to have a look at it somehow.*

Quigley: *Yeah, okay.*

Burke: *Would you try and sort me out of the shit?*

Quigley: *Cause I, I, I'm running into bloody problems with this Committee.*

Burke: *Yeah.*

Quigley: *I'm going to have to get Ben Wyatt on to it, I think, as soon as he gets elected.*

Burke: *Good.*¹⁰²

[115] Later that day Mr Ince sent a further email in which he stated:

*Thanks Brian, John has spoken with me and advised me of the progress. I should be able to stall OSR issuing the assessment for a while. If it gets tight, I will let you and John know.*¹⁰³

[116] Mr Quigley in his evidence said he had no recollection of speaking to Mr Ince as described in this email. He said:

*I've got no recollection of - of - of any of this happening. That was the - I knew that that was the purpose that they were - the improper purpose that they were trying to use the Committee for, but I've got no recollection of speaking to Ince.*¹⁰⁴

[117] However, in a telephone call to Mr Burke on the afternoon of 3 February 2006 Mr Quigley refers to having spoken to Mr Ince.

Quigley: *I've just finished speaking to Tony.*

Burke: *Oh good.*

Quigley: *Uhm, and I've said you've gotta, I said Burkey's really cracking the whip across my back and it's not pleasant mate.*

Burke: *Yeah (laughs).*

Quigley: *Now, if you could ring me the moment you get an anxiety, I'd appreciate it. Ah, I said you're just about to get an assessment, he said no, I can hold that off for a month or two, but what are we gonna do?*

Burke: *Yeah.*

Quigley: *I said well, the Committee got back to you in my absence, and they weren't going to look at individual cases, they'd just look at policy matters. I said ah, Norm, being the skilled politician that he is, came up with an argument that in the Senate this is exactly the sort of conduct they looked at.*¹⁰⁵

[118] When questioned about this call, Mr Quigley's evidence was to the following effect.

Did it occur to you at the time that in doing that you were giving Mr Ince some comfort that in fact you might support an inquiry?---Of course.

Wasn't that a little dangerous for you - - -?---No.

- - - to do that?---No, politicians do that all the time. I mean to say - - -

*What, make false promises?---Absolutely - absolutely. Politicians do that all the time. That's their stock-in-trade when dealing with difficult people. ... I wanted to give Ince comfort because what Ince was going to do was go straight back to Brian Burke, straight back to him.*¹⁰⁶

[119] On 7 March 2006 Mr Ince sent an email to Mr Quigley in which he said that an assessment was being prepared by OSR and that "it is imperative that, if we are to stop this, it must be done before an assessment issues".¹⁰⁷ Mr Quigley said he had no recollection of seeing this email and that it was sent at a time when the only emails his staff were attending to were those from constituents or Mr Mallard.¹⁰⁸ The email was also copied to Mr Burke, who responded the following day saying "I've spoken to John who is going to call you".

[120] In a telephone conversation on 8 March 2006 between Mr Burke and Mr Quigley the following was said:

Burke: *Well, mate, they've just got, I've just got another email from these people, they're gonna*

Quigley: *What, Tony Ince?*

Burke: *Yeah, they're, they're gonna issue an assessment. Even if we can work out a way to defer that, even if you tell the Tax Commissioner that you're looking at, at some inquiry that will include this taxpayer, please*

Quigley: *Okay*

Burke: *don't do anything.*

Quigley: *I'll speak to Ince this morning.*

Burke: *Would you do that?*

Quigley: *Yeah.*¹⁰⁹

[121] In evidence, Mr Quigley agreed that what he understood Mr Burke was here suggesting was that a statement by Mr Quigley that the Committee was looking at holding an inquiry could be used to obtain a deferral of the assessment. Mr Quigley said that this was, in his view, "totally improper". However, when asked whether he was under some obligation to report this suggestion he said:

*... didn't you think you were under some obligation to report that? ---
No, because it's not improper conduct by him. That's - - -*

No, but it's a request - - -?---For me to act improperly.

- - - for you to act improperly?---That's right, sir. If I act improperly I'm under an obligation to report it.

I think the question really is do you consider that you're under an obligation to report the fact that you had been asked by someone to act improperly?---No, sir. I'm asked by - you're asked by taxpayers all of the time to act improperly. There's all - about every second person that comes in the office asks you to do something improper.

But I suppose there's two ways to deal with that: either you say, "I cannot do that, that is quite improper - - -"?---I've already said that to him before.

All right, and if you're not going to do that the other way to deal with it would be to report it to someone?---Sorry. In respect of the first, I did the first. That didn't - - -

Not here, you didn't?---No; no, no. You've got to understand Mr Burke is relentless.¹¹⁰

[122] Mr Quigley also agreed that on the face of this conversation with Mr Burke he appeared to be agreeing to do what Mr Burke was requesting. Mr Quigley accepted that this was not necessarily safe or wise but that all he intended with such calls was "to bat them away".¹¹¹

[123] On 25 April 2006 Mr Burke again spoke to Mr Quigley on the telephone. The topic of the payroll tax matter arose and Mr Burke complained at the lack of action by Mr Quigley.

Burke: *When are you going to get on to this fucking payroll tax thing for me?*

Quigley: *Ah, fuck Brian. We haven't had a bloody meeting. What are we going to do?*

Burke: *Well let's bring it up and fucken call for an inquiry or ask for some papers or at least get some*

Quigley: *Okay.*

Burke: *request made of the Commissioner about some cases you know.*

Quigley: *Ah okay.*

Burke: *Jesus mate, it's not a very hard ask.*

Quigley: *I'll do it next week.*

Burke: You know.

Quigley: I promise you I'll do it next week.

Burke: I mean I don't ask you for many things.

Quigley: I, I know but, but the Committee, I haven't been there and you

Burke: Well Ben Wyatt's on the Committee now.¹¹²

[124] Mr Quigley said in evidence that he was not promising to do anything in this call, though he accepted that that is the appearance which his words might give. It was, he said, "just another fob-off".¹¹³ Mr Quigley said he was careful to give the impression to Mr Burke that he was not refusing him, though he had no intention of actually doing anything.

There was just no stopping this person, just no stopping him, and that's what I'm saying. I regard myself as very skilful - if this Commission has looked at everything that Brian Burke has been involved in, I regard myself as very skilful, as never having delivered on any request made of me by Brian Burke, yet all the time, yet all the time, maintaining his "patronage" within that right-hand side of the caucus.¹¹⁴

... when you say you never had an agreement, again as I understand your evidence, you are not saying you didn't say you agreed. What you are saying is that although in that conversation we saw a moment you said you agreed, in fact you were not agreeing. That's your position as I understand it. Is that correct?---I promise you that to be the case, sir.

Yes. I just again wanted to make clear in my mind what you were saying?---My reputation stands or falls on the acceptance of that proposition. I understand that, sir.¹¹⁵

... Yes, alright, thank you?---I regret the answers of expediency that I gave Mr Burke, but I've explained the circumstances fully and thank you for the opportunity to fully explain those answers, sir.¹¹⁶

[125] In submissions to the Commission Mr Quigley provided evidence that at the time of the telephone conversation on 25 April 2006 he was undergoing medical treatment in Melbourne. Mr Quigley says that this treatment usually involved the administration of drugs that raised his anxiety levels and affected his coherence. Mr Quigley says that he is unsure that in this condition he understood what Mr Burke was saying. Mr Quigley says that he now believes that he was trying to deflect Mr Burke in a non-confrontational way with a view to trying to remain calm during the treatment.

[126] It would appear that the matter was never brought back before the Public Accounts Committee. Ultimately Mr Ince could not defer OSR any longer. On 7 June Mr Ince wrote an email to Mr Quigley, copied to Mr Burke and Mr Grill, advising that an assessment had issued and there did not appear to be any scope for rescinding it.¹¹⁷

[127] Mr Quigley said that he could recall being telephoned by Mr Burke at his Electoral Office at around this time, he said:

Now, months after - I thought all this thing was just off into the never-never. I've done nothing about it at Public Accounts, as this Commission knows, not a thing; so he rings me up pressuring me again; so in this conversation I - I'm trying to think of a word that the transcript - a more polite word than bulldusting. He was bulldusting me.... I should have said, "Just rack off," but I said - I gave him words that I cannot now recall which would indicate to him that I would be in some way compliant with the request, not of actually putting it to the Public Accounts Committee, but to work up an argument like the Senate were doing.¹¹⁸

[128] There is no independent evidence of such a telephone discussion. In submissions to the Commission on behalf of Mr Burke the occurrence of such a call was effectively denied.

[129] Mr Quigley also believed that at around the same time as Mr Burke spoke to him he also spoke to Mr Ince.

At that time either Mr Ince rang me or I rang Mr Ince, not knowing his name, not knowing his name, and gave him - because I thought if he's onto Brian and this is all just - because this has just come out of left field nine months after my last conversation; it's only because he's being agitated by his client. I'd give his client the same pollywaffle, but at the time of giving him the pollywaffle he gave me great news. Whatever the notices were or whatever the Commission - the Taxation Office was doing, it was done. It was done. So I said, "Well, I'll keep on thinking about this Senate matter," and he said, "Well, it mightn't be to the point because now I've got the assessments or result of the appeal," or whatever, and I, with relief, hung up and went and got in my constituents and as far as I was concerned I had rather skilfully, if not a little dishonestly I regret to inform, patted them away.¹¹⁹

2.10 Mr Wyatt is Appointed to the Public Accounts Committee

[130] In telephone calls on 3 February¹²⁰ and 25 April 2006¹²¹ the name of Mr Wyatt was mentioned in the context of this matter by both Mr Quigley and Mr Burke. When asked why he had referred to Mr Wyatt on 3 February 2006, Mr Quigley said that the particular problem he was having with the Public Accounts Committee at that time was that other members appeared unable to give the

necessary commitment and he thought that Mr Wyatt as a new member would be better placed in this regard. He accepted, however, that his comment gave the impression that Mr Wyatt would be an ally in obtaining the inquiry that Mr Burke was seeking. That, however, Mr Quigley said was simply part of trying to “keep him (Mr Burke) strung along”.¹²²

[131] Mr Wyatt was elected to the Legislative Assembly as the Member for Victoria Park in a by-election on 11 March 2006. Shortly after his election he was appointed as a member of the Public Accounts Committee (on 5 April 2006). Accordingly, by the time Mr Wyatt joined the Public Accounts Committee the submission from Fehily Loaring of 18 November 2005 had already been rejected. However, Mr Burke had not abandoned his efforts to have the Public Accounts Committee hold an inquiry.

[132] Mr Wyatt said that very shortly after his election, Mr Quigley approached and spoke to him in the chamber.

Mr Quigley approached me in the Chamber and asked whether I had been approached by Mr Burke on this matter, which I hadn't. I didn't know the details. Quigley just said - asked whether I'd been approached by Burke regarding a tax matter of which I didn't know and I hadn't, and I - and Mr Quigley just warned me effectively and said, look, he had been and had been dealing with it, and just warned me to - - -

Was he making it clear that that was a matter that he had been approached about in regard to the Public Accounts Committee?---That's right, so that's why I think it was - I'm not sure whether it was just after I'd been appointed or thereabouts.

Did Mr Quigley ask you to inform him in the event that you were subsequently approached by Mr Burke?---I don't recall the - I don't know. He may have. I mean, this is nearly two years ago, so he may have. It was a very quick conversation.

Did he say what his concern was, why he was raising this with you?--Well, I think his concern was the fact that it was a matter that had previously been dealt with by Public Accounts Committee, it was - and didn't think it was appropriate that the Public Accounts Committee deal with the matter.

Did he say why he didn't think it was appropriate?---I don't think at that time, no.

Subsequently?---Yes, subsequently, yes.

What did he say to you subsequently?---He said subsequently because it was a matter involving the Office of State Revenue and a particular person as opposed to the implementation of Government

*policy generally, it wasn't appropriate for the Public Accounts Committee to look at.*¹²³

[133] Mr Quigley gave evidence to similar effect.

... I specifically asked Mr (Wyatt) - now he's elected on to Public Accounts, "Have you been approached by Burke to bring into Public Accounts anything to do with the state taxation matter?"... as soon as I said that to him he's gone, "What, what?"... What are you talking about?" and I said, "Burke has been pressuring me for the Public Accounts Committee to look at a state taxation matter. I travel to and from Melbourne all of the time and I'm a bit crook. I want you to tell me now whether you have been a messenger" - you know, like a Trojan horse, as it were - and he denied all knowledge of anything like this. I was satisfied in my own mind. I've since discussed this with Mr Wyatt and I have a recollection of me saying to him, "If anything comes in during my absence, if I can't backload from Melbourne, if anything comes in in my absence on the state taxation matter, you will alert me. This is not coming into our Committee," and he said, "Yes, sure, mate, sure."¹²⁴

[134] Mr Wyatt said that as at the date of this conversation in Parliament he had not been approached by Mr Burke regarding this matter.¹²⁵ However, an approach was subsequently made in a telephone call on 26 April 2006. Mr Burke commences by telling Mr Wyatt that he had referred a matter to Mr Quigley and identifies the company involved and then says:

Burke: *They had a problem with the payroll tax ah with, the State Revenue Office and the State Revenue Office is a law unto themselves, a terrible lot of people.*

Wyatt: *Yes.*

Burke: *And I arranged with Quigley to get the Public Accounts Committee to have a look at the matter and just to put the wind up the SRO a bit, now Quigley got sick etc, I spoke to him twice yesterday he rang me from Melbourne where he is having his chemotherapy and he's going to try and ah, ah, and get this matter up next week.*

Wyatt: *Yes.*

Burke: *Now I just wanted to draw it to your attention so perhaps you could tic tac with him. He told me he's going with you to Leonora or somewhere?*

[135] A little later in the same conversation:

Burke: *Would you have a chat with him and if you can can take the load off him. Look this State Revenue Office, believe me Julian and I will brief you fully, but mate they are absolutely, unbelievably, politically negative for us the way they treat people.*

Wyatt: *Yeah*

Burke: *and the brief we prepared for Quigley is ample justification for the Public Accounts Committee to at least take a look at it.*

Wyatt: *Okay, yep.*

Burke: *What happened was that Quigley was sick, Norm was the Acting Chairman and Norm just signed a letter saying ah it's not appropriate or some other reason and sent it back. Now Norm's reviewed his position and he thinks we should be looking at it and there are Federal precedents too, but it'd be a big help if you could help Quigley cause he's not well*

Wyatt: *Yeah, yeah.*

Burke: *and carry the load*

Wyatt: *Oh look there's no worries I, I'm trying to pick up as much as I can from him in respect, on the Public Accounts, so I'll have a yarn with him tonight about that.*

Burke: *Alright the urgency of the matter is that in the first week in May they're going to issue an assessment and once an assessment issues, legally I won't bother you with the details, the whole*

Wyatt: *yeah*

Burke: *context changes.*

Wyatt: *Yeah, I, I am aware, once that, yeah, I do know that.*

Burke: *okay?*

Wyatt: *No worries.*¹²⁶

[136] Mr Wyatt agreed that it was clear that what Mr Burke was referring to was the same matter that Mr Quigley had raised with him on his first entering Parliament. He said that he did nothing after this conversation with Mr Burke because Mr Quigley was "very keen to - ensure that nothing ever became of it".¹²⁷ Mr Wyatt was asked why he responded to Mr Burke in the way he did.

One interpretation of your responses to Mr Burke in this conversation is that you are giving him to understand that you will pursue this matter on his behalf. Did you have that intention? --- No.

Is there some reason that you would not have told him that? --- Look, this is a sort of conversation that an MP would probably have with somebody every single week, somebody calling the electorate office and saying, "This committee or that committee should review this or that." Now, you're right. Perhaps I should have been a bit ruder and told him where to go. However, I didn't, and that's just a matter of, I guess, being a bit more polite than I perhaps should have been.

I'm not suggesting it's necessarily a good idea to be impolite, Mr Wyatt, but I just wonder when dealing with Mr Burke, is there some reticence on your part to not be blunt with him in rejecting his overtures? --- Obviously, in this case, I guess you're right, but I think it was probably based on the fact I didn't know enough about the background of what was going on.¹²⁸

2.11 Mr Quigley tells Public Accounts Committee Members of the Approaches by Mr Burke

[137] Mr Quigley gave evidence that at around the time the Privileges Committee met to consider holding an inquiry into this matter there was a report in the media to the effect that a Member of Parliament was the subject of a referral from the Commission.¹²⁹ Mr Quigley said that following a Public Accounts Committee meeting he and some of the other members were having an informal discussion. Mr Quigley said that he told them the following:

Guys, you know that in the paper, that's me." I didn't tell them about Burke. They said, "What are you talking about?" I said, "Just trust me. That's me."... "That's me and it doesn't involve any of you, and I've done no wrong and that they will be investigating me, but I'll just let you know it is your Chairman and it doesn't involve any of you people and you need not worry." That's the first time. I'm not mentioning Mr Burke.¹³⁰

[138] Mr Quigley said that a short time later the Public Accounts Committee travelled to Karratha on business and following a meal with other members he raised the subject again.

They then started complaining to me, the Committee that is, started complaining to me that every other Committee gets to travel overseas and the furthest I'll bring them is either Alice Springs or Karratha, and it's not right and it's not fair. They don't serve on these committees [for] nothing. I said to them, "Aren't you bloody thankful that you've got me as a gate keeper and not a travel agent?" A gate keeper is my job, not to be your travel agent. They said, "What you

are talking about?" I said, "When that Burke came to me to walk something into this Committee that would have been improper," and they're saying, "What", because this is coming as a surprise to them, they're saying, "What are you talking about?" I said, "Well, I'll tell you a story," and I took them through all this. ... I said, "Do you realise that's the job of the Chairman?" What you've got to bear in mind, sir, rightly or wrongly, not big-headedly, but these were all fairly, not young, but new people to public life, and I very much considered it my responsibility as Chairman to be the gate keeper and make sure that nothing ever wrong happened on that Committee.¹³¹

- [139] Dr Thomas confirmed that he was first made aware of the approaches by Mr Burke when Mr Quigley told members of the Public Accounts Committee when this investigation was first mooted.

Were you aware of any other members of the Committee being approached by Fehily Loaring or anyone acting on their behalf?---At that time, no. I have to say that about two months ago when this particular investigation came up that the Chairman Mr Quigley, at the end of a Public Accounts Committee meeting suggested that this might be a line of inquiry that he might have had contact with somebody else and that this might come up. That was a couple of months ago, I can't tell you exactly when.

Did he say who it was that he had contact with? --- He suggested a telephone call with Brian Burke.

Was that the first time you had heard that suggestion? --- Yes.¹³²

- [140] Mr Redman also recalled a discussion with Mr Quigley in this regard and that this was also the first time he had heard of any approaches by Mr Burke to a member of the Public Accounts Committee.

... following a meeting, it would have been about mid to early this year when, after our meeting had finished, John Quigley asked us just to stay back after the meeting in the Assembly meeting rooms and brought up for our information, as I understand it, reference to a letter that came into the Committee some time ago. ... and he mentioned potential investigations by the CCC in that regard. It was an informal discussion. ... and he pointed out to us that he had taken phone calls from Brian Burke in regard to a matter and that at that stage he was undergoing, you know, some treatment for his lymphoma and he was getting some pressure in regard to taking up a matter. ... and basically he pointed out his sort of sequence of events that he was getting some pressure over the phone. He didn't take up the matter on two occasions, I understand it, but I believe on the third occasion he sort of relented, but his argument was that because he was under some pressure with regard to his chemo treatment that over the phone he may have said, "Well, look, we will do it," or something or other, something along those lines.¹³³

2.12 Disclosure of Approaches by Lobbyists

- [141] Part of an elected Member's job is to be lobbied by their constituents, whether they are professional lobbyists or ordinary citizens. The right to influence government decisions is a fundamental tenet underpinning our system of government and a form of political participation that helps make "the wheels of government" turn. When managed according to "the public interest", lobbying has not only a legitimate but also an important role to play in the democratic process.
- [142] It is therefore not necessarily a problem for elected Members on a committee to hear and consider the views of lobbyists and the private interests they represent. It is only when private interests are left unfettered – allowed privileged and unfair access over others, and/or where the extent of external influence on government decisions is hidden – that the credibility and transparency of government decision-making is brought into question and the public interest compromised. The challenge for elected Members is to ensure that access to government is available equally to all groups, to balance the competing interests, knowledge and experience of the various interest groups, and above all, to maintain transparency, objectivity and openness in the decision-making process.
- [143] Disclosing contact with lobbyists is one way of alleviating any concerns of undue influence in government decision-making. There is, however, no requirement for Members sitting on committees to disclose when they have been lobbied on a matter before the committee for consideration, although they are free to do so. Whether or not this is done is entirely a matter for individual Members as things presently stand. There is no guidance to be found in any rules or guidelines for Members.
- [144] On one view if a Member is lobbied on behalf of a private interest but has no intention of acting in the way sought there is no need to disclose. On the other hand if there were a general rule that such approaches should be disclosed this would ensure transparency in decision making and provide a simple rule in cases of doubt.
- [145] Members of the Public Accounts Committee were asked about the desirability of approaches by lobbyists being disclosed. Dr Thomas was asked in this regard:

There's nothing in this letter to suggest that Mr Quigley had been approached by anyone on behalf of Fehily Loaring. I don't know if you - it's just a one-page letter. Is that something that you would have liked to have known at the time that this was under consideration?---Absolutely. The - sorry, get on my hobby horse here a bit, but the committee system functions when it's - there's a great degree of honesty amongst the members of the committee. I mean, there's committees of a number of different parties and it's difficult to make that function and it's difficult to make it not party political, and probably the exercise in question was a good example

*of that, where policy should not really be investigated. If the government decides it's going to raise or lower taxes, that's not an issue for a committee which is supposed to be bipartisan in its working. If there's an influence that's suggesting investigations, and look I myself have investigated a number of - have suggested and initiated a number of the investigations the Public Accounts Committee have started on; if there was an outside influence then that would be very, very disturbing because I mean, even though the committee, the committee itself, might come up with a perfectly reasonable and proper report, the influence of what that's being done would taint that report consistently.*¹³⁴

[146] Dr Thomas also identified the fact that such influences are hidden as a particular problem.

*... you did mention that you would have had some concern to know what influence may have driven a particular outcome. Do I take it correctly from that you were there referring to the need for committee members to be aware of the influence of private interests as opposed to the public interest?---Absolutely. I mean - let me use an example of the Upper House committee. I'm not an expert at it, but in relation to what I think those members did wrong, if they had have come to the committee and suggest, and said outright that certain parties had suggested and were proposing that investigation, I actually probably wouldn't have a big problem with that. The fact that it's hidden and the fact that those people have - if it's out in the open it's written in the minutes and everybody is aware of it, you then make a decision as a committee. The fact that it's hidden is the problem.*¹³⁵

[147] Mr Redman was asked:

When it comes to matters coming before the Committee and being considered, do you have any process or procedure for disclosing whether you have been lobbied by a private interest in respect of a matter?---I don't - I'm not aware of any formal processes there. I guess it would be incumbent upon the members if there's pressure from a certain quarter that they should disclose that.

What would your expectation be? --- I would have thought that it was probably reasonable that you would disclose the fact that you are getting some pressure from an outside source. I guess if you're taking a number of phone calls on the matter my expectation would have been that it was put up to the Committee.

Would you have any concerns if there had been such approaches and they were not disclosed and the member of the Committee was actually advocating in favour of a particular proposal? --- Yes, I'd have to say yes.

*Why would that be?---It's - bear in mind I'm fairly young into the game of Parliament and I guess you see even in my own circles that there's this pressure from a whole range of quarters to take up particular issues and you need to exercise caution and discretion in regard to how you carry out those pressures and that you're acting with integrity, and I think it's reasonable that if there are pressures from a particular quarter that you need to disclose that to the committee, whether it be vested interests as we did with formal disclosures or in committee deliberations.*¹³⁶

[148] Mr McRae was asked:

If there had been an approach to one of the Committee members, by for example a lobbyist, urging them to take a particular view about this issue, would you expect that that Committee never would disclose that approach?---If they were in favour of the proposition generally, yes. I mean, you know, committee work is by its very nature broad-ranging, investigative, it's a problem-solving body for the Parliament and not everything that is said to every member is reported, nor is every view brought by each member to the committee acted upon; so - I mean, these are matters that are continually under assessment and judgment and discussion. ...

... if there had been an approach to one of the Committee members by a lobbyist urging that person to support an inquiry by the Committee, when that matter came up for discussion would it be your expectation that that Committee member would disclose that they had been so approached?---Let me answer you this way: I would disclose it. ...

*... it's part of being honest and forthright with your colleagues on the Committee, isn't it?---If the circumstances are that somebody is trying to gain an interest and they have lobbied you, I would disclose it.*¹³⁷

[149] There are certain risks inherent in not disclosing approaches by lobbyists. A failure to disclose by Members may give the appearance of impropriety even when this is not the case. Lobbyists are, by their very nature, not responsible for promoting an unbiased or balanced view of the issue at hand, nor must they abide by "public sector rules". They are responsible for communicating the views and interests of those they represent and may employ various strategies, beyond arguing the merits of their case, in seeking to influence the position a Member takes on a matter. These strategies could include offering positive inducements, such as, election campaign funding, promising to assist the Member in advancing their political career, misrepresenting information in support of a particular position, or resorting to threats and harassment. Such approaches are not always blatant or categorical. There can be elements of innuendo, subtlety, implication or half-truths intertwined adding to the difficulty for a Member in responding to these kinds of tactics.

[150] The risk is when a lobbyist engages in such tactics the Member may, either unwittingly or otherwise, be influenced in their position on a matter by promises of such assistance rather than by an examination of the merits alone. Even if a Member is able to consciously exclude such considerations from their mind, there may still be the perception that he or she has acted improperly. Public confidence in government decision-making and the Member's credibility could be undermined if such attempts to influence are not disclosed but subsequently revealed.

[151] The facts of this matter also expose another predicament. Where a lobbyist is perceived as having power or influence then it may be seen as necessary for political survival not to overtly refuse requests for assistance, nor to reveal that they have been made. Such double-dealing can obviously create real problems for the individual Member. These risks were acknowledged by Mr Quigley.

... there was some risk to yourself in giving this sort of promise, this sort of assurance, to Mr Ince, as it would seem you did, because surely if that got back to your other Committee members, "John Quigley is giving me his support. He is assuring me that this will have his support" in terms of an inquiry, your colleagues on the Committee might say, "Well, he has never told us that he had been approached by people"?---I could - that's true. That's a fair point. ...

I'm not propounding a theory here, Mr Quigley, I'm more simply just asking you questions to see whether in fact what you're suggesting was in fact an altogether wise thing to do in the circumstances?---No, it wasn't wise. It wasn't wise. I accept - discussing any of this with Mr Burke wasn't wise. I regarded it at the time as part of my political survival.¹³⁸

[152] Mr Quigley said that dealings with Mr Burke had to be handled by him in a particular way.

Mr Burke is a management issue for me in the sense that if he went around undermining my pre-selection, even today, amongst that right side of caucus, I'm a goner, my parliamentary career is finished, unless the left pick me up ... so at all times I've got to deport myself in a way that doesn't aggravate him but doesn't give him - but I don't do anything improper or I don't deliver on what he's got, and I have done that very skilfully ... In other words, I've strung him along ...¹³⁹

[153] Mr Wyatt also acknowledged that in dealing with Mr Burke the fact that he held some influence within the ALP was a factor.

... could it be that because Mr Burke is, certainly was at the time, a factional power broker within the Party, that it is not necessarily easy for a person in your position to say no to him in unequivocal terms? --- Look, you can make that argument, that's right, and you're correct. Back then, Mr Burke was influential.¹⁴⁰

[154] Mr Quigley was asked whether it would have been possible for him to disclose the approaches made to him to the other Committee members.

*Do you think on reflection that it might have been advisable from perhaps your own perspective to have told the other Committee members about these approaches by Mr Burke at an earlier stage?--
-Well, as you sit here now, as you sit here now, it would have been better to tell Mr Burke to rack off. ...*

No, but what I'm asking you is if you had your time again would it not have been the most effective way of neutralising Mr Burke's power or any misinterpretation of that to have told, in private perhaps, the other Committee members that these approaches had been made and you had no intention complying with them?---But you can't tell them in private. There's no such thing in politics as in private. ...

But Mr Quigley, the danger is surely that if you don't expose these things and tell people at the time they are happening, that fact may be later misinterpreted?---No, it won't be misinterpreted, sir, because I trust everyone. I trust everyone. It won't be misinterpreted. What will be later done is it will be examined under the microscope, and I'm prepared - being closer to my demise than you by decades, I am prepared to be examined under the microscope closely. There is nothing on my conscience at all, and I look you in the eye, sir. There is nothing on my conscience in this regard that I agreed to enter into any agreement to bring this in.

Do you think there might be some good grounds for, in general, members of committees being obliged to disclose to their colleagues on a committee if they have been approached by a lobbyist representing a private interest? --- I think that if the matter's going into the Committee the point you make is very valid. What I did, however, was approach Ms Kerr, disclose that I had been approached, albeit not by Burke, but disclose that I had been requested and made sure it didn't come into the Committee, and that was my point. Without being rude, sir, that was my point I was trying to make at the outset in relation to a proposed inquiry. There was never a proposed inquiry. There was a request by a lobbyist - I say singular but I don't know still what part Grill played in this, but there was certainly a request by a lobbyist. There was never a proposal for an inquiry. The only person that can propose an inquiry is a member of the Committee, and it was never done, and while I was Chairman it never would happen.

If it had gone further and it had in fact reached that stage where you are saying there's a proposal, are there in place clear guidelines which would require a committee member in those circumstances to disclose an approach by a lobbyist? --- Not that I'm aware of, sir, further - over and above - over and above the general guidelines for the proper behaviour of Members in the Legislative Assembly.

Yes, which don't really address this particular circumstance? --- They don't. They don't, but I know what's right and wrong, sir.

Sure, but there might be some good grounds for perhaps making that a little clearer don't you think? --- In view of what I've read coming out of this Commission and some of the conduct that I've read coming out of this Commission, absolutely. ...¹⁴¹

2.13 Conclusions Regarding the Conduct of Mr Quigley

- [155] The evidence is that Mr Quigley was approached by Mr Burke to arrange for the Public Accounts Committee to hold an inquiry into issues relating to payroll tax. It was clear to Mr Quigley from the outset that this approach was being made to further the interests of a paying client of Mr Burke. Mr Quigley considered that it would be improper to use the powers of the Public Accounts Committee for the purpose of advancing the private interests of one of Mr Burke's clients.
- [156] For a member of such a committee to use their position for the purpose of advancing the interests of a private individual rather than pursuing the public interest would involve a lack of honesty and impartiality. It would also involve a breach of the trust placed in the Member by reason of his office. Such a misuse of position could be viewed as being of such seriousness as to provide reasonable grounds for termination of office. Accordingly, if such conduct occurred it could constitute misconduct within the meaning of sub-sections 4(d)(i), (ii), (iii) and (iv) of the Act. It is important to note in this regard that such misconduct would not be based merely on being asked to act in such a way but on the officer acting to achieve that purpose rather than pursuing the purposes for which the authority to act had been given.
- [157] Mr Quigley has stated that he never had any intention of doing what Mr Burke asked of him. There is certainly nothing to suggest that Mr Quigley ever did anything to promote the idea of an inquiry. In fact it is clear that when the letter from Fehily Loaring arrived he expressed a view to Ms Kerr that an inquiry was inappropriate and that view was passed on to the other members at the meeting on 23 November 2005.
- [158] There is some inconsistency between Mr Quigley's evidence and that of Ms Kerr regarding whether he revealed that he had been approached, when it was that he expressed a view that an inquiry was inappropriate and whether he directed the form of a rejection letter. Given that Mr Quigley has stated that his recollection is likely to have been affected by chemotherapy, Ms Kerr's evidence is more likely to be accurate in these respects. Accordingly, Mr Quigley has possibly overstated the extent of the efforts he took to thwart Mr Burke. Ultimately, this does not alter the fact that he did oppose an inquiry.
- [159] However, Mr Quigley's actions were at odds with what he said to Mr Burke and Mr Ince. In conversations with each of them he gave the impression that he was supportive of an inquiry. Whilst he initially maintained that he had done

nothing to encourage a belief that he would assist Mr Burke, he accepted that in telephone conversations he does appear to do so. Mr Quigley did not merely avoid making a commitment to Mr Burke, he gave the positive impression that he would help. He found it expedient not to tell Mr Burke that he did not think an inquiry was appropriate. This is why Mr Burke, Mr Grill and Mr Ince were so surprised when the Public Accounts Committee rejected the submission on 23 November 2005. Even if Mr Quigley had no intention of doing what Mr Burke was asking, in giving the appearance that he was willing to comply he gave the impression that Mr Burke had influence of value to the client.

[160] Mr Quigley's view is that it did not matter what he said to Mr Burke and Mr Ince since he never had any intention of providing the assistance they sought. He says that the making of a false promise in these circumstances is not unusual. However, that seems to overlook why he felt it necessary to behave in this way. If his honest belief was always that an inquiry was inappropriate why could he not have said this at the outset? Why was it necessary to lead on a paying client of Mr Burke when a simple "no" at the start could have saved everyone time and the client, possibly, fees for consultants?

[161] The answers to these questions are simple. Mr Quigley believed that a clear rejection of Mr Burke's requests could be detrimental to him in political terms. Mr Quigley thought that Mr Burke had power and influence within the ALP and would use it against him if he refused a request for assistance. In particular Mr Quigley believed that Mr Burke could work against him in a future pre-selection. Mr Quigley did not want to comply with Mr Burke's wishes because he considered that this would be improper. On the other hand he did not want to suffer the possible consequences of refusing Mr Burke. In these circumstances he chose to deceive Mr Burke and Mr Ince as to his real intentions.

[162] In submissions to the Commission Mr Quigley describes his position in the following terms:

Simply saying "no" to Mr Burke would not be the end of the matter, he would keep on coming back, as he did, and I was not prepared, given my state of health, whilst not being in any way fearful of Mr Burke, I was not prepared to suffer the stress of continual confrontation with Mr Burke. My position of rejection of Mr Ince's request had been made clear to both Mr Ince and Mr Burke. Thereafter, it was just a matter of fobbing Mr Burke off until the State Taxation Office issued an assessment, which I understood to be imminent.

[163] This course is an inherently dangerous one. It relies upon the false promises to assist not coming to light at the time they are made. There is clear evidence of Mr Quigley agreeing to assist in the setting up of an inquiry in circumstances where he believed this to be quite improper. At face value these promises appear to be an agreement to act improperly. As Mr Quigley has said, his

reputation depends upon his agreement to assist being accepted as having been a deception.

- [164] Fortunately for Mr Quigley it is now possible to judge his statements to Mr Burke in the light of subsequent events. That he told Ms Kerr that he opposed an inquiry and warned Mr Wyatt that he may be approached, support a conclusion that he did not intend to assist Mr Burke in this regard.
- [165] The question whether Mr Quigley should have disclosed the approaches made to him by Mr Burke is not simple. There was no rule of procedure or Standing Order of the Legislative Assembly that required such disclosure. Mr Quigley refers to two relevant factors: that he did not intend to act in accordance with the requests made to him; and that there was never a proposal for an inquiry formally before the Public Accounts Committee for consideration. As to the first factor, whether or not a member has relented to pressure it may nevertheless be relevant to other members to know that such pressure is being exerted. As to the second factor, there may be a risk in leaving the disclosure until a point when a formal proposal is under consideration. For example, how could Mr Quigley have known what view the other members would have of the Fehily Loaring submission at the 23 November 2005 meeting that he could not attend? As it happened the other members all agreed to reject the request, but if they had been of a different view it would surely have been relevant for them to have known of the pressure that had been exerted on Mr Quigley and that the inquiry was being sought to advance a private interest.
- [166] Mr Quigley has suggested that such a disclosure could be used against a Member by political opponents. That may well be true, but does not address whether a disclosure should have been made as a matter of principle. Mr Quigley has also said that he was prepared to face the risk that assurances he gave to Mr Burke would not be misinterpreted if “examined under the microscope”. However, it must surely be better for such approaches to be disclosed at the outset than be the subject of detailed inquiry later. That a person is willing to disclose such approaches tends to suggest that they have not been influenced, in much the same way as does the disclosure of a conflict of interest. On the other hand a deliberate non-disclosure is liable to be seen as being indicative that the approach has been influential. Whilst this inquiry has shown that that was not the case here, an inquiry may have been unnecessary had there been complete disclosure at an early stage.
- [167] As is apparent, there is considerable risk involved in acting as Mr Quigley did. To agree to a request by a lobbyist to act in a way that is believed to be improper, if exposed, will obviously demand explanation. It is highly undesirable that a Member of Parliament should ever feel the need to agree to act improperly out of a belief that refusal will impact upon him or her adversely. That a Member may feel such a need only contributes to the unlikelihood that they will disclose their interaction with the lobbyist. To disclose that a lobbyist has requested a Member to arrange for a committee to conduct an inquiry to assist his client is one thing, but for the Member to also disclose that he

agreed to that request even though he had no intention of so acting would obviously be more problematic for the Member.

- [168] A clear and well-known requirement for all such requests to be disclosed could be protective of Members. Such a requirement would deter requests to act in a way that could lead to misconduct, defuse the power of any implied political repercussions and provide Members with a shield in that they could tell any person who attempts to influence them of the need to disclose that fact. Without such a requirement a Member may be left in the invidious position of having to choose between deceiving a lobbyist with perceived political power and giving the false impression of compliance, relenting to the pressure and acting in a way the Member considers inappropriate or refusing the lobbyist and facing adverse consequences politically.
- [169] Mr Quigley has advanced reasons as to why he did not disclose the approaches by Mr Burke to the other members of the Public Accounts Committee until this inquiry was proposed and, even if those reasons are not ultimately satisfactory, there is no reason to think that he did not honestly believe them to be good ones at the time. When this is added to the fact that an inquiry by the Public Accounts Committee was never advanced and that there were no guidelines for the disclosure of such approaches, it would not be possible to come to a conclusion that Mr Quigley has engaged in any misconduct.

2.14 Conclusions Regarding the Conduct of Mr Wyatt

- [170] Mr Wyatt's involvement in this matter is significantly more limited. Mr Wyatt was the subject of an approach by Mr Burke on 26 April 2006 in which Mr Burke was clearly seeking his support for an inquiry by the Public Accounts Committee. Mr Wyatt's responses are vaguely agreeable without there being a commitment to do anything besides speak to Mr Quigley.
- [171] Mr Wyatt said that prior to receiving this call he had already been told by Mr Quigley that an inquiry would be inappropriate. There is no reason to think Mr Wyatt knew anything more about the matter than he was told by Mr Quigley and Mr Burke. Mr Wyatt says that it was because he did not really know the background that he did not refuse Mr Burke's request to speak to Mr Quigley. It is also possible, however, that Mr Wyatt did not want to offend Mr Burke unnecessarily.
- [172] Mr Wyatt agreed that Mr Burke had supported his pre-selection and election. Mr Wyatt also accepted that Mr Burke may well have suggested that he was instrumental in Mr Wyatt's pre-selection, but Mr Wyatt said that was an impression Mr Burke gave to every Member of Parliament. When asked whether he felt under any obligation to Mr Burke, Mr Wyatt said that he did not feel that as a result of Mr Burke's support he had to act on his behalf.
- [173] There is no reason to believe that Mr Wyatt ever did anything to promote the idea of an inquiry. There was no occasion for him to disclose the approach

that had been made to him because the idea of an inquiry had already been rejected by the Public Accounts Committee before he joined and appears never to have been raised again. On the evidence no opinion of misconduct could be made against Mr Wyatt.

2.15 Recommendation

[174]

Recommendation 1

It is recommended that consideration be given to formulating a procedure for the disclosure of approaches made to committee members by those wishing the member to take a particular position in respect of a matter which is before the committee or may come before it for consideration or a decision. Such disclosure would assist in ensuring that the significant powers of committees are not improperly used for the purpose of advancing private interests. Disclosure requirements should include the name of the person who made the approach, the interest that they represented and the position that they advocated. It would be desirable if disclosures were made at the commencement of each meeting and recorded in the minutes.

CHAPTER THREE

THE ROAD SAFETY MATTER

3.1 Background

- [175] The Australian Drivers Rights Association (“ADRA”) Inc represents, amongst others, a number of retailers of radar detection devices. In 2006 the President of ADRA was Mr Secco. Mr Secco describes ADRA as “a lobby group” with about ten thousand members across Australia, most of whom are from the auto accessories industry. Mr Secco is also the director of a company, one of whose product lines is radar detectors.
- [176] On 9 January 2006 the then Minister for Police and Emergency Services, the Hon Michelle Roberts MLA, announced that legislation to ban radar detectors would be a priority for the Government in the forthcoming parliamentary year. In consequence of this Mr Secco sought the assistance of consultants to assist ADRA in lobbying the Government to either abandon or mitigate the proposed ban.
- [177] Mr Secco was initially referred to Mr Theodorsen. Mr Theodorsen is a consultant who, at that time, undertook some “government relations” work.¹⁴² Mr Theodorsen is a long-standing friend of Mr Grill and is also acquainted with Mr Burke. From time to time they would refer work to each other or work together for a client.¹⁴³
- [178] Mr Theodorsen explained to Mr Secco that his strength was in policy analysis and developing submissions and that he had very little “political clout”. Mr Theodorsen suggested that if that was what Mr Secco needed then Mr Burke and Mr Grill may be able to assist him. As it transpired ADRA retained the services of Mr Theodorsen for the purpose of drafting submissions and briefing notes and separately retained Mr Burke and Mr Grill for “strategic advice”, as Mr Theodorsen described it.¹⁴⁴
- [179] On 27 January 2006 Mr Secco sent an email to Mr Grill with a copy to Mr Burke attaching a letter proposing a fee for lobbying services to be provided to ADRA. The fee structure proposed was \$8000 as an initial sign-on fee with \$18,000 per annum for a period of three years, if the legislation was deferred, payable in monthly instalments. A success fee of \$18,000 was also proposed. Success was defined to be one of the following: “the legislation being successfully opposed by Caucus or Parliament; ... or on satisfactory legislation being passed that would allow the continued use and sale of SWS equipped Radar Safety Detectors in WA; ... or the matter is deferred for a period of 3 years”.¹⁴⁵ Mr Burke and Mr Grill agreed to accept the retainer.¹⁴⁶
- [180] SWS is an acronym for Safety Warning System. This is a system that can be incorporated into a radar detector and which alerts drivers to emergency vehicles, road works and other hazards by detecting warning signals issued by devices on such vehicles or at such sites. Mr Secco intended to advocate

that radar detectors fitted with SWS had potential safety benefits that outweighed concerns that the detector could be used to evade speed detection radars and thus should be exempted from any ban.

[181] Mr Burke said that the strategy that was developed was to promote a proposal that there be a broadly-based inquiry into road safety. It was believed that if there was such a review it would provide an opportunity for re-consideration to be given to a ban on radar detectors. Mr Burke was of the view that to focus on radar detectors in isolation was unlikely to be productive.

... it was clear to me right from the start that one of the biggest obstacles to overcome was this ingrained traditional wisdom that radar detectors were somehow or other promoting - the use of them was promoting accidents on the roads; in other words, that it would help road safety if radar detectors were banned. That was clear to me from the start.

So was it your view then that if radar detectors were referred to directly that that prejudice may result in people not giving your submissions the attention that they deserved? --- That was certainly my view at the start.... that view changed somewhat as things developed, but generally speaking it was a big ask to expect people to simply accept that if you had a radar detector you had it for any reason that wasn't contrary to the interests of road safety.

Did that change in your thinking mean that later you in fact began to discuss radar detectors with those who you were lobbying?---Yes, to the degree that - to the degree that I could see some other aspects of the question, but never to the extent that I thought it was ever a winner.¹⁴⁷

[182] Mr Grill said in this regard:

... we did take the view that there was such a strong public prejudice against radar detectors that to try and sell the idea of just - admitting to prescribed radar detectors was probably not a saleable proposition. ... We didn't think that radar detectors, because of the prejudice against them, would get a good hearing on their own and there needed to be a broader inquiry in which the question of radar detectors was considered as part of a broader inquiry. There would be a more dispassionate, a more scientific look at the subject.¹⁴⁸

[183] The idea was to make approaches to Members of Parliament, in both Government and Opposition, to suggest a broad review of road safety and garner support for it. Concurrently, it was intended to approach the Minister for Police in the same way.

3.2 The Meeting with Mr McGrath

[184] At the time of these events Mr McGrath was the Opposition Spokesperson on road safety issues. Mr McGrath has a long-standing friendship with Mr Maumill, a presenter for the 6PR Radio Station.¹⁴⁹ Mr Maumill is also a friend of Mr Burke.¹⁵⁰

[185] On 3 April 2006 Mr Burke telephoned Mr Maumill and asked him to arrange a meeting with Mr McGrath.¹⁵¹ Mr Maumill did this and then telephoned Mr Burke. It was apparent to Mr Maumill that this meeting must be to advance the commercial interests of a client of Mr Burke and Mr Grill.

Maumill: *Yeah but what are we, what, what's our angle in this, what's it for, what, you need to tell me why.*

Burke: *Our angle is this, that they've announced plans to ban radar devices.*

Maumill: *Right*

Burke: *We don't think they should ban them. We're not saying they shouldn't ban them, but they should put that question into this review.*

Maumill: *And so you're saying that the radar device, what the detection devices?*

Burke: *Yeah, the radar detection device.*

Maumill: *So we're looking after the interests of people that sell them.*

Burke: *Yes.*¹⁵²

[186] Mr Maumill attended the meeting, which took place in a café close to 6PR.¹⁵³ Also present were Mr McGrath, Mr Grill and Mr Secco.¹⁵⁴ Mr Maumill said that he had forgotten that Mr Burke had told him that the object was to look after the interests of those selling radar detectors and that nothing in that regard was said at the meeting.¹⁵⁵ Rather the meeting was about the desirability of conducting a broad review of road safety.¹⁵⁶ Mr Maumill, however, did say the following at the commencement of the meeting and in Mr McGrath's presence.

At the beginning of the meeting I said to Julian Grill, who I don't know very well I might add, "I would imagine, Julian, that you're not driven by altruistic motives and that you wouldn't be here asking this person to speak to John if it wasn't part of your business." I said that to him and Julian thought that was funny. Then I said to the person opposite that I hoped that I didn't get here this early in the morning if you've got nothing to say, and I said to Mr McGrath, "Just be aware

that Julian is a creature of commerce and that, although he may be wanting to reduce the road toll in WA, his first interest will be those of his client." All of that was said in jest, but I think that everyone at the table took my point.¹⁵⁷

[187] Mr Grill said of this meeting:

What was asked of Mr McGrath at this meeting? --- I can't remember with certainty but I suspect it was that he and his Party might favour a full independent inquiry into road safety.

So not specifically radar detectors but road safety in the broad? --- Yeah, road safety in the broad, including radar detectors, yeah.

Did you make it clear to Mr McGrath that you wanted this review to cover radar detectors?---I would imagine so.

Did you make it clear to him that in doing so you were acting on behalf of a paying client of yours, Mr Secco?---I can't remember specifically.¹⁵⁸

[188] Mr McGrath said that the genesis of the idea of a broad review of road safety policy was the meeting he had with Mr Grill and Mr Secco.¹⁵⁹ Mr McGrath recalled being contacted by Mr Maumill to arrange that meeting.

Bob Maumill phoned me and said would I go to a meeting and meet this guy. He said, "This guy's got a lot of great ideas on road safety. I think you should meet him," and I said, "That's fine." I'd met a lot of people and I was happy to have the meeting, and then he said, "Also, Julian Grill will be there".

Did he say who this guy was at that stage? --- I'm not sure that he named him, but he just said, "I want you to meet this guy who is a full bottle on road safety," and at that time I was - because I was new to the portfolio I wanted to meet anyone I possibly could who could help me with that portfolio.

Sure. Did you ask why Mr Grill was going to be in attendance?---No, I didn't ask because, you know, I didn't really see it as being an impingement because I remember it was some months earlier that the Premier had lifted the ban on his own Ministers dealing with Mr Grill and Mr Burke. In his own words he said, "It's time to move on." I was aware that Mr Grill and Mr Burke had been representing some very high profile clients, including a couple in other portfolios of mine, the racing and gaming industry - - -

Sure, that's the point. I'm not trying to suggest that necessarily you shouldn't meet with Mr Grill, but you knew that he was a lobbyist who worked for paying clients? --- Yeah, I didn't - I didn't look at that. I didn't - I didn't ask that question, no.

It didn't occur to you that he might be there because he had a paying client who wanted you to do something?---I must admit at the time I was very committed to achieving something in road safety and I think that was my primary aim of going to the meeting. I might have been a bit - I might have been a bit sort of bemused by the fact that Mr Grill was there.¹⁶⁰

[189] Mr McGrath confirmed that Mr Grill, Mr Maumill and Mr Secco were present at the meeting.¹⁶¹ Mr McGrath said that this was the first time he had met Mr Secco and the first time he had heard of ADRA, though he subsequently looked up the Website of that Association.¹⁶² Mr McGrath described what occurred in the following terms:

... basically I think we just discussed what was - where we were going wrong with road safety. The road toll was spiralling out of control and this guy who was representing a drivers group was saying to me that the strategies that were being put in place by the Government clearly weren't working and that, you know, someone had to do something about it.

What did you find out about the Drivers Rights Association, who they were?---No, all I knew, that he was - I spoke to him a couple of times. I said, "What do you do? Why do you do this stuff? Do you get paid for doing it?" He said, "No." He said, "This is my passion," he said, "and people can join up on the Website and I want to represent drivers who are out there." He said he had members from all around Australia, and really I mean I didn't - you know, it didn't bother me about those credentials because I was only looking at ideas, you know, like if this was about road safety.

Did you know that Mr Secco had a commercial interest in the retailing of radar detectors? ---No, I didn't know that.

Did you ever find that out? --- No. No, that's news to me.

Did you know that, did anyone tell you, that it was part of a strategy to try and defer the banning of radar detectors, that there be a comprehensive review of road safety? Did anyone reveal that to you? --- No.

Do you think that your approach to the information provided by Mr Secco might have been affected, had you known that he had a commercial interest in the retailing of radar detectors?---Yes, I'm sure it would've.¹⁶³

[190] Mr McGrath said that at no time was there any mention to him of there being a commercial interest involved in the suggestion of a review. Mr McGrath said that whilst he appreciated that ADRA was the client of Mr Burke and Mr Grill he thought that that Association was simply interested in improving road

safety generally. Mr McGrath said that he asked Mr Secco what his interest was and was told that it was to improve road safety.¹⁶⁴

[191] Mr Secco confirmed that Mr McGrath asked him what the nature of his association with Mr Burke and Mr Grill was and that he replied that he “retained them to get in to see the Government to talk about road safety”. Mr Secco said that he never told Mr McGrath that he had retained Mr Burke and Mr Grill to prevent radar detectors from being banned or that he had a business which included the sale of radar detectors.¹⁶⁵

[192] Mr McGrath said that he did not ask Mr Burke or Mr Grill what the interests of Mr Secco were.¹⁶⁶ Mr McGrath was asked what affect the knowledge that there was a commercial interest involved might have had.

... Mr Secco in fact has a commercial interest in the banning of radar detectors, had you known that at the time, wouldn't you have approached information that was coming from him, whether it be through Mr Grill or Mr Burke, a little more critically? --- I would've.

*Is it a matter of concern to you now that you were not told that fact? - -- Well, I'm learning something now that I didn't know and, yes, it does concern me.*¹⁶⁷

[193] Mr McGrath said that one of the proposals raised at the meeting was the possibility of a motion being raised in Parliament by Mr McGrath calling on the Government to hold a review into road safety. In this context someone suggested that it should be possible to get support from Government Backbenchers for such a motion. Mr McGrath believes that at the meeting it was decided that Mr Grill would prepare such a motion.¹⁶⁸

3.3 The Motion put by Mr McGrath

[194] Mr McGrath said that he initially began working on a draft motion of his own, but this was superseded when a more detailed motion was sent to him by Mr Burke.¹⁶⁹ Mr McGrath said at that time he had been a Member of Parliament for just over twelve months and was relatively inexperienced in preparing such documents. Mr McGrath said he was happy to accept the assistance of Mr Burke who he recognised as having extensive experience in parliamentary procedures.¹⁷⁰ Mr McGrath said he believed that Mr Burke was “genuinely trying to get something done with road safety and was trying to give me support”.¹⁷¹

[195] On 30 May 2006 Mr McGrath telephoned Mr Burke and advised that he intended placing the matter on the motion paper and asked whether that was a good idea. Mr Burke said that Mr D’Orazio, a former Minister of Police, had supported the idea of a review and that Mr Theodorsen would soon be meeting with Mr Kobelke, the present Minister. Mr Burke then said that it would be prudent to wait until some support for the motion could be secured.

Burke: *So, uh what I'd what I'd do is this, uh I would sit on it until we gave you the nod and said look the Government's disposed to support it,*

McGrath: *Yeah, yeah.*

Burke: *and then you'd need to phrase it in a way that gave the Government room to get some kudos so you might move a motion that says that this House urges the Government to consider.*

McGrath: *Yeah fair enough okay.*¹⁷²

[196] Mr Burke then said that he would prepare a motion and send it to Mr McGrath by email.¹⁷³ Mr Burke said that it had to be "strictly confidential". Mr McGrath said he didn't take much notice of the last requirement.¹⁷⁴ In an email on 7 May 2006 Mr Burke had said that he had spoken to Mr D'Orazio and "informed him fully re McGrath to make sure that there's no impression that we are behind McGrath in any way".¹⁷⁵ Mr Burke said that:

*... I can recall being conscious of not being seen to be supporting the Opposition in opposing the Government. I guess, I speculate, that what I was trying to say to John D'Orazio was that if McGrath proposes an inquiry, it's not to be seen as being an attack on the Government, it's just something that has been suggested to him or represented to him as being in the interests of good policy-making.*¹⁷⁶

[197] On 31 May 2006 Mr Burke sent an email to Mr McGrath saying "this is to confirm that I am drafting a suitable motion for your consideration". Mr Burke then set out what the motion would contain. There was no specific reference to radar detectors. Mr Burke then suggested that Mr McGrath could propose a task force to do the work.¹⁷⁷ In evidence Mr Burke said that such a task force could be helpful to Mr Secco because it might accept his views or at least defer any banning.¹⁷⁸

[198] Mr Burke then sent an email to Mr Theodorsen asking him to draft the motion and suggesting that "a page of speaker's points would be very helpful too".¹⁷⁹ Mr Theodorsen did draft the motion and speaker's points and sent them to Mr Burke by email on 1 June 2006.¹⁸⁰ Mr Theodorsen said that "substantial amounts" of the content were provided by Mr Secco and that he had worked with Mr Secco on the wording and content of the motion.¹⁸¹ Mr Burke forwarded the draft by email to Mr McGrath the same day without making any changes.¹⁸² Mr McGrath later said that he had not received the draft motion¹⁸³ and it was resent to him on 16 June 2006 by Mr Grill.¹⁸⁴

[199] Mr Theodorsen said that at around this time he made attempts to obtain a meeting with the then Minister for Police, Mr Kobelke, to discuss a road safety strategy. Mr Theodorsen was unable to arrange a meeting but did speak to a

staff member in the Minister's office.¹⁸⁵ Mr Theodorsen then telephoned Mr Burke on 9 June 2006.

Theodorsen: *She had spoken with Kobelke and she's briefed him fully about it. Uhm, he said he'll meet with us but he doesn't want to do it for a few weeks because, he is aware of the radar detectors issue, and he doesn't want to give it any priority.*

Burke: *So what does that mean?*

Theodorsen: *What that means is he'll, he'll, he'll talk with us, he's happy to meet with us in a few weeks time but he's dealing with other stuff at the moment. He doesn't want to attend to this with any urgency, essentially*

Burke: *So, ah, when John moves his motion in Parliament what's his reaction gonna be?*

Theodorsen: *Uhm, I think he'll just take it as it comes, like 'cause I said to Alison, eh, she, she has briefed him about that 'cause I said that uh, look we are aware that McGrath's got an interest in it and we certainly encouraged him to take a non-political approach and we think he will but we wanted Kobelke to be aware of that.*

Burke: *Yeah.*

Theodorsen: *Alison said look that's fine, he knows it's, he knows it's likely and he understands that it's not something you've put him up to. So. ...*

Burke: *Okay. Now how does he know about the radar issue?*

Theodorsen: *Uhm, well we gave him, we gave the submission which talks about SWS and that talks about who our clients are and I told Alison who our clients were, the ADRA.¹⁸⁶*

[200] Mr Kobelke said that it is possible that he was briefed by his staff regarding radar detectors, but he had no specific recollection.¹⁸⁷ Legislation to ban detectors was not a high priority, though he was aware of the undertaking made by a previous Minister. Mr Kobelke said he never had any knowledge that Mr Burke and Mr Grill were urging that there be a review of road safety on behalf of a client who had a commercial interest in radar detectors. Nor did he know that they had assisted in drafting of the motion.

[201] On 16 June 2006 Mr Grill spoke to Mr McGrath by telephone. Mr McGrath said he had spoken to Mr Theodorsen and understood that Mr Kobelke was non-committal on the idea of a review of road safety policy. Mr Grill said that the previous Minister, Mr D’Orazio, had been “worded up and ready to go”. The conversation then continued:

McGrath: *He said he’s spoken, he told me, I spoke to John yesterday*

Grill: *Oh, right. Did you?*

McGrath: *And yeah, and he said he’s spoken to Kobelke.*

Grill: *Oh good. Okay then.*

McGrath: *And Kobelke, Kobelke was aware that, that you guys are involved with the, uhm, the radar detectors.*

Grill: *Yeah.*

McGrath: *But he, he, he indicated that they’re not a big issue as far as the Government is concerned at this moment.*

Grill: *No.*

McGrath: *In other words they won’t be bringing any...*

Grill: *Well, that’s good news for us.*

McGrath: *They won’t be rushing any legislation through at this moment to, uh, to ban radar detectors.*

Grill: *Yeah.*

McGrath: *I think there’s more important things on the agenda at the moment.*

Grill: *Yeah.*¹⁸⁸

[202] Mr McGrath was asked in evidence to explain what it was he was referring to when he said Mr Kobelke knew that “you guys” are involved in radar detectors.

... you do seem to have been conscious that Mr Grill and Mr Burke were involved with radar detectors? --- Yeah, I - I don’t know how - how that - you know, how I became aware of that. I - from some discussion I had, it might’ve even been with Glenn Secco who said that some members were concerned about radar detectors, you know, might be banned or something, but I didn’t take much notice

of it because I had never had any indication given to me in my time in Parliament and I'd never heard it mentioned that there was any move to ban radar detectors and it had never been raised with me by police as a - as a big issue, so - - -

Right, but you seem to be suggesting that in this context. You see where it is, where you mention it on that page? --- Yeah, I know. I'm trying to work out - I'm trying to work out how - - -

Yes? --- How - how I did mention that in context. Now, someone has obviously mentioned it to me - - -

Yes, but you seem to appreciate that the fact that Mr Grill and Mr Burke are acting on behalf of somebody who has a commercial interest in radar detectors might - - -?---No, I didn't say that.

Well - - -?---I said that I'd - I'd never known - I had never known and have never been told that Mr Secco had a commercial interest in radar detectors.

But isn't what you're saying here when you say, "You guys are involved with the radar detectors," aren't you recognising - - -?--- Yeah.

- - - there that Mr Grill and Mr Burke are acting for a client who has that sort of interest?---Yeah, but the - but the client - the client mentioned to me in his - in his conversation with me and he inferred to me that he had members who were concerned if there was a ban on radar detectors. Now, he didn't say there, "They're my customers," and I assumed that those members could've been farmers. We had - we had one MP that had a radar detector and was seen in the carpark (sic) with a radar detector. A lot of country people have said to me from time to time, you know, "We - we use radar detectors," but, you know, there was no - I was never aware of any commercial involvement by Mr Secco in radar detectors.¹⁸⁹

[203] In an email on 16 June 2006 Mr Grill re-sent the draft motion and confirmed that Mr McGrath would put it on the motion paper for the following Tuesday. Mr Grill also noted that Mr McGrath was to speak to Mr Kobelke to determine his likely response to the proposal.¹⁹⁰ Mr McGrath said that all he did in this regard was tell Mr Kobelke just before presenting the motion what it was he intended to do.¹⁹¹ Mr Grill said in his email that what was proposed was that if Mr Kobelke supported the motion it could be debated on Wednesday but if not it would left on the motion paper with a view to it being debated in the next session to allow further efforts to be made to obtain support.¹⁹²

[204] Mr Secco has suggested that as time went on there was less concern about a ban on radar detectors because new police ministers did not seem to see it as a priority. Mr Secco says that he still continued to have an interest in a broad review of road safety for its own sake.¹⁹³ However, on 30 July 2006 a meeting

took place between Mr Secco, Mr Burke, Mr Grill and Mr Theodorsen. There was a discussion about the effect that uncertainty regarding a ban was having on Mr Secco's sales of radar detectors.¹⁹⁴ The discussion also canvassed future strategies.

Burke:

... I just reckon that you need to do, we need to do three things within the overall strategy. The first is we need to continue to be successful deferring this matter, and that involves promoting it to a plane of seriousness by what McGrath's doing in a way that will be a successful delaying tactic. So, that's one thing. The next thing we need to do is to now get the list that you've renovated and refurbished; John you need to do a draft for me that I can look at to send to these people on the list. Now, we need to be very careful, because we don't want them lifting the profile either, do you know? What we need to do is to think carefully about what message we want to send them, if we want to send them a message even, or how we want to ready them. I guess the best thing we can do is this: we can get these people to write to support an inquiry into some or some number of aspects of road safety. Don't let any of them mention, don't let any of them mention radar devices. We should simply write to them and say we're aware that you're a conscious, that you're a, a safety conscious driver and that you're aware of the need to maintain proper standards and safety measures on the roads. Unfortunately, we've had this list of suggestions which is leaving everyone in no-man's land. Now take the time and the trouble to write to your local Member, have a list of local Members, have their email addresses, have their faxes and their phone numbers, and even if we get a hundred letters or a hundred contacts out of it, to try and support this motion that that's a good thing, but don't mention radar detectors. ...

... the next thing we've got to do is write a speech for him, but, but I do think John, that this letter needs to be from the ADA (sic) and it needs to stress road safety and give them something to do and make it easy for them to do it, and then we can try and work into McGrath's speech, whatever it is that you and Glenn and others think might be a bit public, publicity attracting. Alright. Now, the next thing that we need to do

Secco:

Yeah. So to their local Member?

Burke: *Yeah, well to their local Member is preferable. Yeah, to their local Member, but, but we'll have a list of, of, of Members that we'll attach, alright?*

Secco: *Yeah.*

Burke: *Now the next thing that we need to do; well we don't need to, but we should be looking to it just to make sure that these sales aren't declining. So somehow or other, leave them, we don't want to mention them to them, but somehow or other we need to now think in the next week or two about how we can lift sales somehow. That does two things: first of all it justifies our expense, the money being paid to me and Julian, and to you, whatever, but secondly, it also brings more disciples to the cause. Everyone who buys a radar detector or radar device then doesn't want to lose it or lose its effectiveness.¹⁹⁵*

[205] The motion came up for debate on 16 August 2006.¹⁹⁶ The motion presented in the House was in almost identical terms to that provided to Mr McGrath by Mr Burke and Mr Grill. Mr McGrath was questioned about this:

... I agreed with the general thrust of the - of the motion. I went through it with my researcher who had been working with me on road safety for six months and, you know, basically they were the things that - that we had been working on and we agreed with.

So effectively, apart from crossing out a couple of words in two spots, I think, you read this motion from what you had been provided by Mr Grill. Yes? --- Yeah.

In reading through it did you give any critical thought as to whether it reflected your own views? --- Yeah, I did and it did reflect my own views. It was - you know, basically they were all the things that we had been told by stakeholders in the - in the road safety industry that they believed needed to be done. We had been - we'd been working in a lot of these areas and, you know, I could've changed it and put it into my own words but I thought, well, it read well to me.¹⁹⁷

[206] Mr McGrath said that he told the then Leader of the Opposition, the Hon Paul Omodei MLA, as he was walking into the Chamber that he would "like a bit more time on this motion because Brian Burke is trying to get me some support on the Government side".¹⁹⁸ Mr McGrath did not mention that Mr Burke had provided the draft motion because, he said, it was not a detailed discussion. When asked whether he had ever told anyone in his Party of the role played by Mr Burke in respect of the motion Mr McGrath said:

Well, you've got to understand that in the Liberal Party, Brian Burke is sort of seen as public enemy Number 1. I had a different

*relationship with Brian Burke because of our days as journalists and, you know, I guess I had a different relationship with him to a lot of other people.*¹⁹⁹

[207] Mr McGrath said he spoke to Mr Kobelke in Parliament and said “listen, if you ... want more time on this, uh, I’m happy to, to adjourn the debate”. Mr Kobelke said he didn’t need any more time and the motion was debated.²⁰⁰ The motion was not supported by the Minister and debate was adjourned pursuant to Standing Orders of the Legislative Assembly.²⁰¹ The following day Mr Burke spoke to Mr Theodorsen and said that he had tried to have Mr McGrath put the motion off and would now ring Mr Wyatt “and I’m gunna get him to suggest that they go now and amend it to a standing committee of Parliament”.²⁰² Mr Burke then spoke to Mr Wyatt:

Burke: *Okay, now look. I so, I sort of tutored McGrath a bit to try and make it a non-political issue and all of those sorts of things you see?*

Wyatt: *Yep.*

Burke: *Now, I reckon there’s a lot of mileage in this for the Government and I think the best way of getting that mileage is by amending his motion to create a standing committee of the Parliament.*

Wyatt: *Ah okay.*

Burke: *See we have standing committees on different things.*

Wyatt: *Yeah.*

Burke: *Mate, there is no better platform for someone of your age and stage than a standing committee like this one where you’re the chairperson, and you’re able to make comments about matters that are relevant, do you know what I mean?*

Wyatt: *Yeah, indeed, indeed.*

Burke: *So I think this, I think I’ll tell McGrath to go and have a talk to you.*

Wyatt: *Yep.*

Burke: *He’s very, ah, I’ve known McGrath for fifty years.*

Wyatt: *Yep.*

Burke: *And he would be a very good committee member and there's the, there's the possibility of all these high profile things like inspection of police procedures, and traffic control. Do you know what I mean, all those sorts of things?*²⁰³

[208] There was nothing said in this telephone call about Mr Burke acting for ADRA in seeking a review, nor that he had a client with a commercial interest in what he was proposing. Mr Burke then spoke to Mr McGrath and told him it had been a mistake to allow the matter to proceed in the way it had and that Mr McGrath had carriage of the motion and could have adjourned it had he wished. Mr Burke then asked Mr McGrath whether he was presently in Parliament and told him that he should go to speak to Mr Wyatt who "agrees with the notion of a standing committee" and would "speak to Kobelke and other people". Mr Burke said it may be possible to "resurrect that from the debate still".²⁰⁴

[209] Mr McGrath did speak to Mr Wyatt about the matter²⁰⁵ but said that "he didn't want to talk much about it".²⁰⁶ Mr Wyatt said in evidence:

*I had one conversation with Mr McGrath on this and it was in the Chamber on - it was pretty generic. He didn't mention the name Burke, he just simply said he'd - he was looking - he was looking for support and I couldn't tell you what I said. I probably thought, yeah, it was probably a good idea to get this thing up; not a standing committee, that is, but to have the debate in Parliament. Personally I thought having a parliamentary committee perhaps wasn't the best way to consider it, road safety, there are better ways to do things, but I didn't have any - after that I never spoke with Mr McGrath again on this issue and he never approached me on this issue.*²⁰⁷

[210] On 23 August 2006 Mr Burke suggested to Mr McGrath that he allow the motion to remain at the bottom of the notice paper and this is what occurred.²⁰⁸ The motion eventually lapsed and nothing occurred regarding a standing committee.

3.4 Communications with Mr D'Orazio

[211] Mr John D'Orazio was the Minister for Police and Emergency Services between 3 February and 8 May 2006. There are references in the telephone calls of 30 May 2006²⁰⁹ and 16 June 2006²¹⁰ by both Mr Burke and Mr Grill to Mr D'Orazio as having indicated some measure of support for the review they were proposing. The utility of such support fell away, however, when he ceased being the Minister.

[212] Mr Theodorsen gave evidence that he and Mr Secco had attended a meeting with Mr D'Orazio.

I had prepared a paper on road safety which we presented as a submission to Mr D'Orazio and it talked about the need for a - I don't think it was so much a public inquiry but an - well, it would have been public of course but an independent inquiry, bipartisan strategic approach to road safety. I recall a meeting with myself, I'm pretty sure Mr Secco was there, pretty sure Mr Burke and Mr Grill weren't there; Mr D'Orazio, and his then Chief of Staff who I think might've been Tim Fraser. We presented our paper and Mr D'Orazio seemed pretty much on a wavelength with us, and I thought we - we'd pretty much got to a good point with Mr D'Orazio, Minister D'Orazio as he - - -

Where was this meeting? --- That was at Parliament House.

Whereabouts at Parliament House? --- I think that was in - as you go in through the double sliding doors, to the left-hand side there's a small meeting room. I'm just about a hundred per cent certain that's where the meeting took place.

So it was not just a casual conversation, it wasn't actually an arranged meeting? --- Absolutely, yeah, we did arrange the meeting; yeah

How long was it?---It might have been about - between 15 minutes and half an hour. I seem to recall that it was cut short because there was a division that the minister had to attend and vote, and that predates the McGrath contact.

You said that you had a feeling that Mr D'Orazio was favourable to what you were suggesting?---Yes. I thought he was positive at that meeting. I'm pretty sure I had subsequent discussions with Tim Fraser, and I know from subsequent meetings, strategy meetings if you like, with Mr Secco, Mr Burke and Mr Grill, that either Mr Burke or Mr Grill or both said that they thought, you know, we had support there. Now, they may have had discussions with Mr D'Orazio or his Chief of Staff.²¹¹

[213] Mr Theodorsen was able to produce a copy of the briefing paper²¹² that he presented to Mr D'Orazio at this meeting and report on the meeting which indicates that the meeting was held on 30 March 2006.²¹³ Mr Theodorsen later used that paper as a basis for the motion and speaking notes that he drafted for Mr McGrath.²¹⁴

[214] Mr Secco also recalled meeting with Mr D'Orazio and said he spoke about the benefits of radar detectors. Mr Secco said that his impression was that Mr D'Orazio did not see a ban on radar detectors as being an effective policy. Mr Burke and Mr Grill were not mentioned in that meeting.²¹⁵

[215] Mr Burke also gave evidence that he had a recollection of speaking to Mr D'Orazio²¹⁶ and this is supported by the existence of a telephone call between

them on 7 May 2006 in which Mr Burke speaks about Mr McGrath intending to move for an inquiry and having obtained some information in this regard from ADRA.²¹⁷

[216] Mr D’Orazio, however, had no recollection of the meeting with Mr Theodorsen and Mr Secco, nor of speaking to Mr Burke about the matter. Mr D’Orazio could not recall whether the Government had a declared policy on radar detectors. He had no recollection of the motion or it ever being discussed with him. Mr D’Orazio said that it is unlikely he would have been concerned with a ban on radar detectors on 7 May 2006 as it was the day before he resigned from the Ministry. He could not account for why Mr Burke and Mr Grill appeared to have the impression that he was in favour of a broad review of road safety policy.²¹⁸

[217] Notwithstanding Mr D’Orazio’s lack of recollection, there is strong evidence that there were meetings and communications between him and those representing the interests of ADRA. Mr D’Orazio’s evidence, however, did not assist in elucidating the nature of those meetings. What can be concluded from the available evidence is that Mr D’Orazio had indicated that he was supportive of the concept of a broad review of road safety policy. However, the evidence does not establish that he was aware that this idea was being promoted on behalf of a client who had a commercial interest in radar detectors.

3.5 Conclusion as to the Conduct of Mr McGrath

[218] At the initial meeting arranged by Mr Maumill the idea of a broad review of road safety policy was proposed to Mr McGrath. It was obvious that this was being advanced by Mr Secco on behalf of ADRA. It was also apparent to Mr McGrath that Mr Grill and Mr Burke were working for ADRA.

[219] Mr McGrath had a genuine interest in road safety and was the Opposition Spokesperson at the time on this subject. Mr McGrath was prepared to listen to proposals on this subject that may be constructive. Mr McGrath is adamant that he was never told that members of ADRA, including Mr Secco, had a commercial interest in the sale of radar detectors and that at least one reason why the review was being advocated was to ensure that a ban on radar detectors was not implemented or was, at least, delayed.

[220] Mr McGrath says that he queried what Mr Secco’s interest was and was only told that Mr Secco had a passion for road safety. Mr McGrath did not question Mr Grill or Mr Burke in this regard. Mr Grill says that he would have no reason for not telling Mr McGrath of the nature of Mr Secco’s interest, though he cannot recall specifically doing so. Mr Theodorsen says that he would not have hidden the fact that Mr Secco was involved in radar detectors but also cannot recall whether this was revealed to Mr McGrath. Mr Secco says that he never told Mr McGrath of his commercial interest in radar detectors or the basis on which Mr Burke and Mr Grill had been retained.

- [221] It was readily apparent to Mr Maumill that Mr Grill and Mr Burke must have had an “angle” and he was told prior to the meeting that they were pursuing the interests of those who were selling radar detectors. It seems surprising in these circumstances that it never occurred to Mr McGrath that ADRA and its agents had another agenda. Mr McGrath was, however, a new Member who had little experience in dealing with lobbyists.
- [222] In assessing whether Mr McGrath’s claim never to have been told or to have realised that ADRA had a commercial interest in advocating for a review can be accepted, the telephone call between he and Mr Grill of 16 June 2006 must be considered. In this call Mr McGrath refers to “you guys” being involved in radar detectors. This appears to strongly suggest that he was aware of another agenda. Mr McGrath says that he might have known that ADRA had members who were concerned that radar detectors would be banned, but that he did not know that this concern arose from a commercial interest in their sale. That explanation of what Mr McGrath said strains credibility. Ultimately, however, what must be weighed in Mr McGrath’s favour is that no person can unequivocally say that the commercial interest was explained to him. Furthermore, it might be thought that there was no interest in that being the focus of attention. As Mr Burke had appreciated from the outset, they were unlikely to succeed if they advocated for radar detectors in isolation.
- [223] Mr McGrath’s inexperience also seems to have made him very ready to accept assistance in the drafting of the motion. Mr McGrath deferred to the greater experience of Mr Burke. In doing so he seems to have been too willing to believe that Mr Burke was offering assistance out of a desire to help him and without any other motive. Yet he knew that Mr Burke and Mr Grill were in the business of providing lobbying services to paying clients.
- [224] It is not necessarily improper to accept the assistance of another in drafting a motion. Where technical issues are involved it might be entirely reasonable to do so. However, there may be a risk that the person providing the assistance wants the motion introduced at a particular time and to be worded in a particular way because it will serve their own private ends.
- [225] It is now apparent to Mr McGrath that he was being used by ADRA and its agents to pursue a review for their own purposes. He says he did not know of or share those purposes and was always motivated by a genuine concern to improve road safety. Mr McGrath was asked:
- ... reflecting now upon it, and me having told you that Mr Secco had a commercial interest in radar detectors, do you have some concern that you may have been used?---From what I've learnt today, yes, I have got concerns.²¹⁹*
- [226] Mr McGrath now appreciates the need to exercise more care and to be more critical in such circumstances.

As a result of this experience, Mr McGrath, is your approach now to people who would lobby you more critical? --- I think - I think that certainly it would have to be.

In what sense?---Well, you know, I've learnt something today in that - certain things have been revealed to me today that, you know, as Members of Parliament we have to be very, very careful, but I've always - I've always worked on the policy that I do what's best and I - you know, at all times with this process my only thought was to do something worthwhile for the people of West Australia with respect to my portfolio of road safety and, you know, I had no - I had no other - no other intentions, you know, as far as - I think in one of the calls I made to Brian Burke he said, "This will be good for your profile," and I mean I didn't come into Parliament to increase my profile.²²⁰

[227] An opinion of misconduct is a serious matter and should not be made unless there is evidence which supports such an opinion. On the material before the Commission Mr McGrath had a genuine interest in road safety and was genuinely seeking to advance that. The evidence does not establish that he was aware Mr Burke was seeking the inquiry to advance the private commercial interests of Mr Secco. In the circumstances there is no evidence of misconduct on his part.

3.6 Conclusion as to the Conduct of Mr Wyatt

[228] As with the Public Accounts Committee matter, the involvement of Mr Wyatt is comparatively slight. Mr Wyatt did receive an approach from Mr Burke that suggested that he support a standing committee to inquire into road safety policy. In that call Mr Burke represented that this would be good for Mr Wyatt. There was nothing said about ADRA or that Mr Burke represented them or that they would have some commercial interest in the establishment of such a committee.

[229] Mr Wyatt does appreciate that he was not initially fully aware of how others might seek to use him to achieve their own ends. It concerned him to be told that at the time Mr Burke approached him he had a client whose commercial interests could be assisted if an inquiry like that proposed prevented or deferred a ban on radar detectors. Mr Wyatt was asked:

Did you wonder what Mr Burke's interest was in this matter? --- I did. I was actually more interested in why he approached me, just because I'd not had any background in this area, not being a former police officer or anything who might've had background in that.

Well, he was representing that this was good for you? --- Yes. That's how Mr Burke operates.

Yes? --- Flattery.

And of course you're very conscious that that's part of the selling technique? --- Yes.

This is something that will work well for you and advance your career? --- Well, I must admit, at the time I - perhaps I honestly thought that he was interested in me. I think what we've seen over the last 12 months suggests that Mr Burke was interested in Mr Burke. ...

... I take it from what you're saying now that at that time at least you were perhaps a little naive as to Mr Burke's - - -?---Absolutely naive, and I think any Member of Parliament who had entered Parliament post Brian Burke would perhaps be a little naive over what Mr Burke was up to. I certainly had no idea about the extent of his activities until the CCC exposed them over the last 12 months.

I take it from that that if he made an approach like that today you would be much more - - -?---I would not be taking Mr Burke's calls today, no.²²¹

[230] The idea of a standing committee apparently went nowhere. Mr Wyatt agreed to listen to Mr McGrath. Mr McGrath seems to have spoken to Mr Wyatt briefly, but there appears to have been no great enthusiasm on either side. There is no basis for any opinion of misconduct against Mr Wyatt.

3.7 Recommendation

[231]

Recommendation 2

It is recommended that consideration be given to formulating guidelines for the drafting of motions by Members, specifically that Members should be cautious about accepting the assistance of lobbyists in this regard, given that the interest of the lobbyist or their client may not be revealed or be readily apparent. Members should exercise care in ensuring that they do not become either the willing or unwitting instrument for advancing private interests. Members should also consider whether if assistance in drafting a motion is received it may be appropriate to disclose that fact.

ENDNOTES

All references to telephone intercepts are references to lawfully intercepted telephone intercepts.

¹ *Corruption and Crime Commission Act 2003*, pp. 29-32.

² *Ibid*, pp. 9-10.

³ *Ibid*, p.9.

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361-363; *Rejtek v McElroy* (1965) 112 CLR 517; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449.

⁵ Letter to The Hon Fred Riebeling MLA, Speaker, Legislative Assembly, of 28 August 2007 from the Commissioner, The Hon L W Roberts-Smith RFD QC [CCC 48346].

⁶ Letter to The Hon L W Roberts-Smith RFD QC of 21 September 2007 from Ms Dianne Guise MLA, Deputy Chairman, Procedure and Privileges Committee [CCC 48800].

⁷ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007. p.50.

⁸ *Ibid*.

⁹ Transcript of Proceedings, Public Examination of Mr Brian Thomas Burke on 6 November 2006, p.849.

¹⁰ Email to Mr Brian Burke of 10 June 2005, 3:48 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd [E 13356].

¹¹ *Ibid*, attached briefing paper [E 13357].

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ Email to Mr Julian Grill of 13 June 2005, 9:01:16 a.m., from Mr Brian Burke, with attached email to Mr Brian Burke of 10 June 2005, 3:48 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd [E 13356, *op cit*].

¹⁷ Email to Mr Mark Egan of 13 June 2005, 2:12:00 p.m., from Mr Julian Grill [E 13407].

¹⁸ Email to Mr Brian Burke and Mr Julian Grill of 16 June 2005, 11:57:43 a.m., from Mr Tony Ince [E 13368].

¹⁹ *Ibid*.

²⁰ *Ibid*, attached detailed statement [E13359].

²¹ Email to Mr Tony Ince of 23 July 2005, 8:52:22 a.m., from Mr Brian Burke [E 13368].

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- ²² Email to Mr Brian Burke and Mr Julian Grill of 12 October 2005, 12:49 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd, Email Chain, p.9 [E 13410].
- ²³ *Ibid*, email from Mr Brian Burke, 12:53 p.m., to Mr Julian Grill, p7.
- ²⁴ *Ibid*, email from Mr Julian Grill, 1:06 p.m., and to Mr Julian Grill, 3:16 p.m., pp.5-6.
- ²⁵ *Ibid*, email to Mr Brian Burke, 8:23 p.m., from Mr Julian Grill, pp.4-5.
- ²⁶ *Ibid*, email to Mr Julian Grill, 9:16 p.m., from Mr Brian Burke, pp.3-4.
- ²⁷ *Ibid*, p.4.
- ²⁸ *Ibid*.
- ²⁹ *Ibid*, email to Mr Brian Burke of 14 October 2005, 11:16 a.m., from Mr Julian Grill, p.3.
- ³⁰ *Ibid*, email to Mr Julian Grill, 3:15 p.m., from Mr Brian Burke, p2.
- ³¹ *Ibid*, email to Mr Brian Burke, 8:30 p.m., from Mr Julian Grill, pp.1-2.
- ³² *Ibid*, email to Mr Julian Grill of 15 October 2005, 3:59:39 a.m., from Mr Brian Burke, p1.
- ³³ *Standing Orders of the Legislative Assembly of the Parliament of Western Australia*, as amended on 16 May 2007.
- ³⁴ Parliament of Western Australia, *Committee Name Lookup*, Public Accounts Committee, Areas of Responsibility of the Committee, viewed 23 May 2008, <http://www.parliament.wa.gov.au/parliament/commit.nsf/CommitteeNameLookup>.
- ³⁵ *Ibid*.
- ³⁶ *Ibid*.
- ³⁷ *Standing Orders of the Legislative Assembly of the Parliament of Western Australia*, as amended on 16 May 2007, *op cit*.
- ³⁸ Transcript of Proceedings, Private Examination of Ms Elizabeth Mary Kerr on 14 December 2007, p.4.
- ³⁹ *Ibid*.
- ⁴⁰ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007. p.56, *op cit*.
- ⁴¹ *Ibid*.
- ⁴² *Ibid*, p57.
- ⁴³ *Ibid*.
- ⁴⁴ *Ibid*.
- ⁴⁵ *Ibid*.
- ⁴⁶ *Ibid*.
- ⁴⁷ *Ibid*, pp.57-58.

⁴⁸ *Ibid*, p.58.

⁴⁹ *Ibid*, p.59.

⁵⁰ Record of Interview of Anthony Robert (Tony) Ince at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 21 November 2007, p.8.

⁵¹ *Ibid*, p.9.

⁵² *Ibid*.

⁵³ *Ibid*, p.15.

⁵⁴ *Ibid*, p.9.

⁵⁵ *Ibid*, p.11.

⁵⁶ *Ibid*.

⁵⁷ *Ibid*, pp.10-11.

⁵⁸ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, p.297.

⁵⁹ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.61.

⁶⁰ *Ibid*.

⁶¹ *Ibid*, p.62.

⁶² Transcript of Proceedings, Private Examination of Ms Elizabeth Mary Kerr on 14 December 2007, *op cit*, p.6.

⁶³ *Ibid*, p.13.

⁶⁴ *Ibid*, p.7.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*, p.8.

⁶⁷ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.65.

⁶⁸ Email to Mr John Quigley of 18 October 2005, 5:54:00 p.m., from Mr Brian Burke [E 13396].

⁶⁹ Email of 25 October 2005 to Mr Brian Burke and Mr Julian Grill of 25 October 2005, 5:13 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd [E 13373].

⁷⁰ Email to Mr Tony Ince and Mr Julian Grill of 25 October 2005, 5:19:23 p.m., from Mr Brian Burke [E13373].

⁷¹ Email to Mr Julian Grill of 26 October 2005, 7:50:07 a.m., from Mr Brian Burke [E 13375].

⁷² Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.67.

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- ⁷³ Email to Mr Brian Burke and Mr Julian Grill of 2 November 2005, 4:13 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd and email to Mr John Quigley of 2 November 2005, 6:12:00 p.m., from Mr Brian Burke [E 13403].
- ⁷⁴ Email to Mr Brian Burke and Mr Julian Grill of 17 November 2005, 4:18 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd [E13378].
- ⁷⁵ Email to Mr Tony Ince of 17 November 2005, 4:43:13 p.m., from Mr Brian Burke [E 13378].
- ⁷⁶ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.71.
- ⁷⁷ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, *op cit*, p.298.
- ⁷⁸ Letter to the Public Accounts Committee of 18 November 2005 from Mr Tony Ince, Fehily Loaring Pty Ltd [01938-2007-0013].
- ⁷⁹ Email to Mr Brian Burke and Mr Julian Grill of 2 November 2005, 4:13 p.m., from Mr Tony Ince, Fehily Loaring Pty Ltd and email to Mr John Quigley of 2 November 2005, 6:12:00 p.m., from Mr Brian Burke [E 13403], *loc cit*.
- ⁸⁰ *With Compliments Slip* and attached letter to the Public Accounts Committee of 18 November 2005 from Mr Tony Ince, Fehily Loaring Pty Ltd [01938-2007-0021].
- ⁸¹ Public Accounts Committee Minutes Meeting No. 18, Wednesday 23 November 2005, p.2 [01938-2007-0022].
- ⁸² Transcript of Proceedings, Private Examination of Ms Elizabeth Mary Kerr on 14 December 2007, *loc cit*, p.8.
- ⁸³ Transcript of Proceedings, Private Examination of Dr Steven Thomas Caldwell on 12 December 2007, p.7.
- ⁸⁴ Transcript of Proceedings, Private Examination of Mr Donald Terrence Redman on 12 December 2007, p.20.
- ⁸⁵ Transcript of Proceedings, Private Examination of Mr Anthony David McRae on 12 December 2007, p.36.
- ⁸⁶ *Ibid*, p.42.
- ⁸⁷ Letter to Mr Tony Ince, Fehily Loaring Pty Ltd, of 23 November 2005 from Mr J R Quigley MLA, Chairman, Public Accounts Committee [01938-2007-0029].
- ⁸⁸ Transcript of Proceedings, Private Examination of Ms Elizabeth Mary Kerr on 14 December 2007, *op cit*, p.14.
- ⁸⁹ *Ibid*, p.10.
- ⁹⁰ Email to Mr Brian Burke and Mr Julian Grill of 28 November 2005, 8:10 a.m., from Mr Tony Ince, Fehily Loaring Pty Ltd [E 13384].
- ⁹¹ Email to Mr Tony Ince and Mr Brian Burke of 28 November 2005, 8:09 a.m., from Mr Julian Grill [E 13385].

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- ⁹² Transcript of Proceedings, Private Examination of Mr Julian Fletcher Grill on 12 December 2007, pp.173-174.
- ⁹³ Email to Mr Julian Grill and Mr Tony Ince of 28 November 2005, 10:06:15 a.m., from Mr Brian Burke [E 13385].
- ⁹⁴ Email to Mr Tony Ince and Mr Julian Grill of 28 November 2005, 10:03:37 a.m., from Mr Brian Burke [E 13384].
- ⁹⁵ Email to Mr Tony Ince and Mr Julian Grill of 1 December 2005, 4:39:35 p.m., from Mr Brian Burke [E 13386].
- ⁹⁶ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, *op cit*, pp.298-299.
- ⁹⁷ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, pp.73-75.
- ⁹⁸ Email to Mr Julian Grill of 20 December 2005, 12:57:14 a.m., from Mr Brian Burke [E 13411].
- ⁹⁹ Email to Mr Tony Ince and Mr Julian Grill of 20 December 2005, 2:37:04 p.m., from Mr Brian Burke [E 13387].
- ¹⁰⁰ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, pp. 75-76.
- ¹⁰¹ Email to Mr Tony Ince of 3 February 2006, 12:35:40 p.m., from Mr Brian Burke [E 13388].
- ¹⁰² Telecommunications Intercept T 0229 and T 0230, 3 February 2006.
- ¹⁰³ Email to Mr Brian Burke of 3 February 2006, 2:59 p.m., from Mr Tony Ince [E 13389].
- ¹⁰⁴ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.79.
- ¹⁰⁵ Telecommunications Intercept T 1326, 3 February 2006.
- ¹⁰⁶ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.105.
- ¹⁰⁷ Email to Mr John Quigley of 7 March 2006, 12:08:55 p.m., from Mr Tony Ince [E 13390].
- ¹⁰⁸ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.80.
- ¹⁰⁹ Telecommunications Intercept T 0238, 8 March 2006.
- ¹¹⁰ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, pp.110-111.
- ¹¹¹ *Ibid*, p.112.
- ¹¹² Telecommunications Intercept T 0236, 25 April 2006.
- ¹¹³ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.114.

¹¹⁴ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.116.

¹¹⁵ *Ibid*, p.117.

¹¹⁶ *Ibid*, p.119.

¹¹⁷ Email to Mr John Quigley, copied to Mr Brian Burke and Mr Julian Grill, on 7 June 2006, 5:19:32 p.m., from Mr Tony Ince.

¹¹⁸ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.83.

¹¹⁹ *Ibid*, pp.84-85.

¹²⁰ Telecommunications Intercept T 0230, 3 February 2006.

¹²¹ Telecommunications Intercept T 0236, *op cit*.

¹²² Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.102.

¹²³ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, p.126.

¹²⁴ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.81.

¹²⁵ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, *loc cit*.

¹²⁶ Telecommunications Intercept T 0234, 26 April 2006.

¹²⁷ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, *op cit*, p.131.

¹²⁸ *Ibid*, p.133.

¹²⁹ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, p.89-91.

¹³⁰ *Ibid*, p.90-91.

¹³¹ *Ibid*, p.92.

¹³² Transcript of Proceedings, Private Examination of Dr Steven Thomas Caldwell on 12 December 2007, *op cit*, p.9.

¹³³ Transcript of Proceedings, Private Examination of Mr Donald Terrence Redman on 12 December 2007, *op cit*, p.21.

¹³⁴ Transcript of Proceedings, Private Examination of Dr Steven Thomas Caldwell on 12 December 2007, *loc cit*, p.9.

¹³⁵ *Ibid*, p.10.

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- ¹³⁶ Transcript of Proceedings, Private Examination of Mr Donald Terrence Redman on 12 December 2007, *op cit*, pp.22-23.
- ¹³⁷ Transcript of Proceedings, Private Examination of Mr Anthony David McRae on 12 December 2007, *op cit*, p.38 and p.41.
- ¹³⁸ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, pp.106-107.
- ¹³⁹ *Ibid*, pp.59-60.
- ¹⁴⁰ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, *loc cit*, p.133.
- ¹⁴¹ Transcript of Proceedings, Private Examination of Mr John Robert Quigley on 12 December 2007, *op cit*, pp.94-96.
- ¹⁴² Transcript of Proceedings, Private Examination of Mr John Patrick Theodorsen on 13 December 2007, p.244.
- ¹⁴³ *Ibid*, pp.244-245.
- ¹⁴⁴ *Ibid*, p.250.
- ¹⁴⁵ Email [E 12968] to Mr Julian Grill of 27 January 2006, 4:17:54 p.m., from Mr Glenn Secco, President, Australian Driver's Rights Association Inc, with attached letter to Mr Grill of the same date from Mr Secco regarding fee for lobbying [E 12969].
- ¹⁴⁶ Email to Mr Brian Burke of 29 January 2006, 12:32 p.m., from Mr Julian Grill, and email from Mr Burke to Mr Grill of the same date, 2:22:12 p.m. [E 12972].
- ¹⁴⁷ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, p.285.
- ¹⁴⁸ Transcript of Proceedings, Private Examination of Mr Julian Fletcher Grill on 12 December 2007, p.190 and p.193.
- ¹⁴⁹ Transcript of Proceedings, Private Examination of Mr Walter Robert Maumill on 13 December 2007, p.198.
- ¹⁵⁰ *Ibid*.
- ¹⁵¹ Telecommunications Intercept T 1245, 3 April 2006.
- ¹⁵² Telecommunications Intercept, T 1251, 11 April 2006.
- ¹⁵³ Transcript of Proceedings, Private Examination of Mr Walter Robert Maumill on 13 December 2007, p.199, p.202 and p.203. Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, pp.218-219.
- ¹⁵⁴ *Ibid*, p202. *Loc cit*.
- ¹⁵⁵ *Ibid*, pp.211-212.
- ¹⁵⁶ *Ibid*, p.203. Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit*, p.218 and p.222.

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- ¹⁵⁷ Transcript of Proceedings, Private Examination of Mr Walter Robert Maumill on 13 December 2007, *op cit*, p.202.
- ¹⁵⁸ Transcript of Proceedings, Private Examination of Mr Julian Fletcher Grill on 12 December 2007, *op cit*, pp.179-180.
- ¹⁵⁹ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit*, p.218.
- ¹⁶⁰ *Ibid*, p.219.
- ¹⁶¹ *Ibid*.
- ¹⁶² *Ibid*, p.220.
- ¹⁶³ *Ibid*, pp.220-221.
- ¹⁶⁴ *Ibid*, p.222.
- ¹⁶⁵ Record of Interview of Mr Glenn Reginald Secco at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 28 November 2007, pp.19-20.
- ¹⁶⁶ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit*, p.226.
- ¹⁶⁷ *Ibid*, p.222. *Loc cit*.
- ¹⁶⁸ *Ibid*, p.223.
- ¹⁶⁹ *Ibid*, pp.227-228.
- ¹⁷⁰ *Ibid*, p.223. *Loc cit*.
- ¹⁷¹ *Ibid*, p.226. *Loc cit*.
- ¹⁷² Telecommunications Intercept, T 1260, 30 May 2006.
- ¹⁷³ *Ibid*.
- ¹⁷⁴ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *loc cit*, p.228.
- ¹⁷⁵ Email to Mr John Theodorsen, Mr Glenn Secco, Mr Julian Grill and another of 7 May 2006, 5:19 p.m., from Mr Brian Burke [E 13018].
- ¹⁷⁶ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, *op cit*, p.287.
- ¹⁷⁷ Email to Mr John McGrath of 31 May 2006, 10:46:00 a.m., from Mr Brian Burke [E 12946]. A cc of this email was sent to Mr John Theodorsen and Mr Julian Grill.
- ¹⁷⁸ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, *op cit*, p.289.
- ¹⁷⁹ Email to Mr John Theodorsen of 31 May 2006, 10:47:00 a.m., from Mr Brian Burke [E 12947].

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- ¹⁸⁰ Email to Mr Brian Burke of 1 June 2006, 11:06:24 a.m., from Mr John Theodorsen, [E 12951] and Attachment, Draft Motion and Speaking Notes for Mr McGrath [E12952].
- ¹⁸¹ Transcript of Proceedings, Private Examination of Mr John Patrick Theodorsen on 13 December 2007, *op cit.* p.260.
- ¹⁸² Email to Mr John McGrath of 1 June 2006, 12:28:00 p.m., from Mr Brian Burke [E 12953] and Attachment, Draft Motion and Speaking Notes for Mr McGrath [E12954].
- ¹⁸³ Telecommunications Intercept, T 1276, 16 June 2006.
- ¹⁸⁴ Email to Mr John McGrath of 16 June 2006, 3:28:21 p.m., from Mr Julian Grill [E 12956].
- ¹⁸⁵ Transcript of Proceedings, Private Examination of Mr John Patrick Theodorsen on 13 December 2007, *op cit.* pp.254-255, p.260 (*loc cit*) and p.262.
- ¹⁸⁶ Telecommunications Intercept, T 1263, 9 June 2006.
- ¹⁸⁷ Transcript of Proceedings, Private Examination of Mr John Charles Kobelke on 13 December 2007, pp.270-273.
- ¹⁸⁸ Telecommunications Intercept, T 1276, 16 June 2006, *op cit.*
- ¹⁸⁹ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit.* p.230.
- ¹⁹⁰ Email to Mr John McGrath of 16 June 2006, 3:28:21 p.m., from Mr Julian Grill [E 12956], *op cit.*
- ¹⁹¹ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit.* pp.231-232.
- ¹⁹² Email to Mr John McGrath of 16 June 2006, 3:28:21 p.m., from Mr Julian Grill [E 12956], *loc cit.*
- ¹⁹³ Record of Interview of Mr Glenn Reginald Secco at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 28 November 2007, *op cit.* p.11.
- ¹⁹⁴ Transcript of meeting held on 30 July 2006 at 9:29 a.m. between Mr Brian Burke, Mr Julian Grill, Mr Glenn Secco and Mr John Theodorsen at Mount Street, Perth WA, pp.5-6 [T 1629].
- ¹⁹⁵ *Ibid.*, pp.7-8.
- ¹⁹⁶ Legislative Assembly of Western Australia Hansard for 16 August 2006, Motion, Review of the Road Safety System.
- ¹⁹⁷ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit.* p.233.
- ¹⁹⁸ *Ibid.*, p.235.
- ¹⁹⁹ *Ibid.*, p.237.
- ²⁰⁰ *Ibid.*, pp.231-232, *loc cit.* and Telecommunications Intercept, T 1267, 17 August 2006.
- ²⁰¹ Legislative Assembly of Western Australia Hansard for 16 August 2006, Motion, Review of the Road Safety System, *loc cit.*
- ²⁰² Telecommunications Intercept, T 1264, 17 August 2006.

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- ²⁰³ Telecommunications Intercept, T 1266, 17 August 2006.
- ²⁰⁴ Telecommunications Intercept, T 1267, 17 August 2006, *op cit*.
- ²⁰⁵ Telecommunications Intercept, T 1256, 23 August 2006.
- ²⁰⁶ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, *op cit*, p.237.
- ²⁰⁷ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, p.140.
- ²⁰⁸ Telecommunications Intercept, T 1256, 23 August 2006, *op cit*.
- ²⁰⁹ Telecommunications Intercept, T 1260, 30 May 2006, *op cit*.
- ²¹⁰ Telecommunications Intercept, T 1276, 16 June 2006, *op cit*.
- ²¹¹ Transcript of Proceedings, Private Examination of Mr John Patrick Theodorsen on 13 December 2007, pp.253-254, *op cit*.
- ²¹² *Safety First, Harnessing New Technologies to Improve Road Safety*, prepared for the Hon John D’Orazio BSC JP MLA, Minister for Police and Emergency Services, Justice and Community Safety, February 2006 [01937-2007-0072].
- ²¹³ Report on Meeting with Ministers D’Orazio and Marlborough, 30 March 2006, Theodorsen Consulting [01937-2007-0071] and Safety First, Harnessing New Technologies to Improve Road Safety, Australia Drivers Rights Association Inc, February 2006 [01937-2007-0072].
- ²¹⁴ Transcript of Proceedings, Private Examination of Mr John Patrick Theodorsen on 13 December 2007, pp.258-260, *op cit*, and Email to Mr John Theodorsen of 31 May 2006, 10:47:00 a.m., from Mr Brian Burke [E 12947], *op cit*.
- ²¹⁵ Record of Interview of Mr Glenn Reginald Secco at the Corruption and Crime Commission, 186 St Georges Terrace, Perth WA 6000, on 28 November 2007, p.11, *loc cit*, and pp.14-16, *op cit*.
- ²¹⁶ Transcript of Proceedings, Private Examination of Mr Brian Thomas Burke on 13 December 2007, p.285, *loc cit*.
- ²¹⁷ Telecommunications Intercept, T 1257, 7 May 2006.
- ²¹⁸ Transcript of Proceedings, Private Examination of Mr John Biase D’Orazio on 12 December 2007, pp.151-162.
- ²¹⁹ Transcript of Proceedings, Private Examination of Mr John Edwin McGrath on 13 December 2007, p.237, *loc cit*.
- ²²⁰ *Ibid*, p.240.
- ²²¹ Transcript of Proceedings, Private Examination of Mr Benjamin Sana Wyatt on 12 December 2007, pp.138-139.