



PRIME MINISTER

SPEECH BY THE PRIME MINISTER
OPENING OF NATIONAL CRIMES CONFERENCE
28 JULY 1983 - CANBERRA

MAY I FIRST WELCOME ALL PRESENT TODAY AND THANK YOU FOR YOUR ATTENDANCE. SOME HAVE TRAVELLED CONSIDERABLE DISTANCES TO BE HERE AND TO ADD YOUR COUNSEL TO OUR DELIBERATIONS. FOR THE PARTICIPATION OF ALL WE ARE DEEPLY GRATEFUL.

WE MEET TODAY BECAUSE OF OUR SHARED CONCERN ABOUT THE EFFECTS OF ORGANISED CRIME ON THE AUSTRALIAN COMMUNITY. WE MEET IN RESPONSE TO THE GROWING ANXIETY THROUGHOUT THE COMMUNITY ON THIS MATTER AS A RESULT OF THE FINDINGS OF NUMEROUS ROYAL COMMISSIONS AND OTHER ENQUIRIES. WE MEET NOT ONLY TO GIVE EXPRESSION TO THAT CONCERN, BUT TO HELP CHART A COURSE TO ENABLE US, AS A NATION, TO ERADICATE THE CANCER OF ORGANISED CRIME.

THE DELIBERATIONS OF THIS CONFERENCE SHOULD, I BELIEVE, BE DIRECTED TOWARDS THE ACHIEVEMENT OF TWO OBJECTIVES - THE STRENGTHENING OF LAW ENFORCEMENT AND THE MAINTENANCE OF CIVIL LIBERTIES. FOR AUSTRALIA - AND EMPHATICALLY, FOR MY GOVERNMENT - THESE OBJECTIVES ARE OF EQUAL IMPORTANCE. WE MUST NEVER ALLOW IT TO BE ASSUMED THAT THE TWO ARE INCOMPATIBLE. IN A FREE SOCIETY, VIGILANCE AGAINST CRIME AND VIGILANCE AGAINST ENCROACHMENT UPON THE RIGHTS AND FREEDOM OF THE INDIVIDUAL MUST GO HAND IN HAND.

THEREFORE, I SUGGEST THE PRIMARY TASK OVER THE NEXT TWO DAYS IS TO SEEK TO BALANCE TWO LEGITIMATE REQUIREMENTS OF OUR SOCIETY: THE NEED FOR ACTION TO COMBAT NEW FORMS OF CRIME, PARTICULARLY ORGANISED CRIME, AND THE NEED TO ENSURE THAT ACTION TAKEN IN THIS DIRECTION DOES NOT JEOPARDISE INDIVIDUAL RIGHTS AND LIBERTIES.

PERHAPS AT THE OUTSET, THE MOST HELPFUL THING WOULD BE FOR ME TO DECLARE MY GOVERNMENT'S ATTITUDE TO THE QUESTION OF A NATIONAL CRIMES COMMISSION. LET ME SAY THAT OUR PRESENT DISPOSITION IS TO SUPPORT THE ESTABLISHMENT OF SUCH A COMMISSION AND TO SEE IT OPERATING FROM JANUARY 1984 AS A NATURAL AND CONTINUING SUCCESSOR TO THE COSTIGAN ROYAL COMMISSION. HOWEVER, WE ARE NOT COMMITTED TO IMPLEMENTING THE FRASER GOVERNMENT'S NATIONAL CRIMES COMMISSION ACT 1982 IN ITS PRESENT FORM. AND I WANT TO MAKE IT VERY CLEAR THAT WE HAVE MADE NO FINAL DECISION ABOUT ANY OF THE MATTERS TO BE CONSIDERED BY THIS CONFERENCE.

IT FOLLOWS FROM THAT THAT WE REGARD THIS CONFERENCE AS A GENUINE CONSULTATIVE EXERCISE. WE ARE EAGER TO HEAR ALL POINTS OF VIEW AND TO TAKE THEM UNDER FULL CONSIDERATION. EQUALLY - AS WITH ALL MATTERS OF HIGH POLICY - THE AUSTRALIAN GOVERNMENT DOES NOT RETREAT FROM ITS ULTIMATE RESPONSIBILITY TO MAKE DECISIONS.

A NUMBER OF ISSUES IN RELATION TO THE ESTABLISHMENT OF A NATIONAL CRIMES COMMISSION HAVE BEEN IDENTIFIED IN THE GREEN PAPER THAT WAS SENT TO YOU EARLIER AND, DURING THE COURSE OF THE CONFERENCE, YOU WILL BE ASKED TO CONSIDER EACH OF THESE ISSUES OR BATCHES OF ISSUES IN DUE COURSE. AGAIN, I SHOULD LIKE TO EMPHASISE THAT, WHEN THE CONFERENCE PASSES FROM ONE ISSUE OR BATCH OF ISSUES TO ANOTHER, IT IS NOT TO BE INFERRED THAT THE CONFERENCE HAS MADE A DECISION ONE WAY OR THE OTHER ON THE MATTER LAST DISCUSSED.

WITH A VIEW TO ASSISTING YOU IN YOUR DELIBERATIONS, MAY I OBSERVE THAT IT IS NOT JUST A MATTER OF BEING "FOR" OR "AGAINST" A CRIMES COMMISSION; EVERYTHING DEPENDS ON WHAT KIND OF CRIMES COMMISSION AND HOW THAT COMMISSION WILL OPERATE.

IT SEEMS TO ME THREE DISTINCT LEVELS OF QUESTIONS NEED TO BE ASKED AND ANSWERED:

- FIRST, IS THE PROBLEM OF ORGANISED AND SOPHISTICATED CRIME SUCH THAT SOME FURTHER AND BETTER INVESTIGATORY MACHINERY THAN WE HAVE AT PRESENT IS NEEDED TO COPE WITH IT?

- SECONDLY, IF THE ANSWER IS "YES", IS THE CONCEPT OF THE STANDING CRIMES COMMISSION PREFERABLE TO ALTERNATIVE APPROACHES, INCLUDING IN PARTICULAR

UPGRADING THE POWERS AND CAPACITY OF THE POLICE,
AND CONTINUING AD HOC ROYAL COMMISSIONS AND
ENQUIRIES.

- THIRDLY, IF A NATIONAL CRIMES COMMISSION IS THE PREFERRED ALTERNATIVE, WHAT SHOULD THE PRECISE FUNCTIONS, POWERS AND COMPOSITION OF THAT COMMISSION BE?

AS TO THE FIRST TWO OF THESE QUESTIONS - THE THRESHOLD QUESTIONS - THE GOVERNMENT IS INCLINED TO SAY "YES", BUT AGAIN I STRESS THAT NO FINAL DECISIONS HAVE BEEN TAKEN IN THIS AREA. WE ARE OPEN TO MODIFYING OUR POSITION IN THE LIGHT OF THE VIEWS EXPRESSED IN THIS CONFERENCE.

AS TO THE THIRD QUESTION - ABOUT THE POWERS AND COMPOSITION OF A COMMISSION - THE GOVERNMENT WOULD BE GREATLY ASSISTED IN REACHING DECISIONS ON THESE MATTERS BY THE VIEWS EXPRESSED AT THIS CONFERENCE.

IT SEEMS TO US THAT ON THIS THIRD QUESTION - FUNCTIONS, POWERS AND COMPOSITION OF A NATIONAL CRIMES COMMISSION - TWO PARTICULARLY CONTENTIOUS ISSUES ARISE.

THE FIRST AND UNDOUBTEDLY THE MOST CONTENTIOUS SINGLE QUESTION ABOUT A CRIMES COMMISSION IS WHAT SHOULD BE ITS PRINCIPAL ROLE. IS IT TO IDENTIFY AND EXPOSE ORGANISED

AND SOPHISTICATED CRIME; OR IS IT TO PACKAGE OR HELP PACKAGE THE KIND OF ADMISSABLE EVIDENCE THAT WILL LEAD TO CRIMINAL CONVICTIONS.

THERE IS ONE SCHOOL OF THOUGHT THAT THE CRIMES COMMISSION SHOULD DIRECT ITS ACTIVITIES TO THE GATHERING AND ANALYSIS OF CRIMINAL INTELLIGENCE SO THAT IT CAN IDENTIFY TO THE ORDINARY LAW ENFORCEMENT AGENCIES PERSONS SUSPECTED OF CRIMINAL OFFENCES, PARTICULARLY MEMBERS OF CRIMINAL ORGANIZATIONS, THEIR ASSOCIATES AND CRIMINAL ACTIVITIES. THESE AGENCIES WOULD HAVE THE RESPONSIBILITY OF PREPARING THE BRIEF TO PROSECUTE AND TAKING PROSECUTION ACTION. FOR THE COMMISSION TO UNDERTAKE SUCH A ROLE, WOULD BE, IT IS SUGGESTED, TO SUPPLANT THE POLICE FORCE.

ONE EXAMPLE OF A COMMISSION WHICH HAS OPERATED SUCCESSFULLY ON THESE LINES IS THE COSTIGAN ROYAL COMMISSION. FROM A COMMONWEALTH REVENUE VIEWPOINT, THAT COMMISSION APPEARS TO HAVE PAID ITS WAY.

THERE IS HOWEVER A CONTRARY VIEW, NAMELY THAT THE CRIMES COMMISSION SHOULD GO BEYOND MERELY IDENTIFYING OFFENCES AND SHOULD ASSEMBLE EVIDENCE WITH A VIEW TO THE PROSECUTION OF OFFENDERS.

IF THIS APPROACH IS ADOPTED, THE COMMISSION WOULD NOT BE EXPECTED TO ASSEMBLE ALL THE EVIDENCE REQUIRED FOR

THE PROSECUTION BRIEF IN THE PARTICULAR CASE AND OF COURSE THE COMMISSION WOULD NOT NEED TO GET INVOLVED ITSELF IN PURSUING PROSECUTIONS OF EVERY OFFENDER THAT THE COMMISSION COMES ACROSS. IT WOULD BE EXPECTED TO EXERCISE THIS ROLE ONLY IN A SMALL PROPORTION OF THE TOTAL NUMBER OF CRIMINAL INVESTIGATION CASES, AND THAT THE COMMISSION WOULD CONSULT THE DIRECTOR OF PUBLIC PROSECUTIONS, SOON TO BE ESTABLISHED, IN THE CHOICE OF CASES IN WHICH THE COMMISSION WERE TO EXERCISE THIS ROLE.

COMMONWEALTH AND STATE GOVERNMENTS IN THE PAST HAVE SOMETIMES BEEN FACED WITH RECEIVING REPORTS FROM ROYAL COMMISSIONS SUGGESTING THAT IDENTIFIED PERSONS HAVE BEEN GUILTY OF VARIOUS OFFENCES BUT FINDING SUBSEQUENTLY THAT THE EVIDENCE PROVIDED BY THE COMMISSION IS INSUFFICIENT OR INADEQUATE FOR SUCCESSFUL PROSECUTIONS. THE VIEW IS PUT THAT GOOD GOVERNMENT AND PUBLIC CONFIDENCE IN THE ADMINISTRATION OF JUSTICE ARE NOT SATISFIED BY MERELY IDENTIFYING OR NAMING OF PERSONS IN REPORTS OF A COMMISSION IF THIS ACTION IS NOT FOLLOWED BY THE CONVICTION AND PUNISHMENT OF THESE PERSONS. THE PROBLEM OF LAW ENFORCEMENT BODIES IS FREQUENTLY NOT JUST THE IDENTIFICATION OF SUSPECTED OFFENDERS BUT RATHER THE OBTAINING OF SUFFICIENT EVIDENCE TO ENSURE THEIR CONVICTION.

YOU WILL NO DOUBT WISH TO GIVE CAREFUL AND DETAILED CONSIDERATION TO THIS DIFFICULT AND IMPORTANT ISSUE.

THE SECOND CONTENTIOUS ISSUE IS WHETHER THE EXCUSE OF SELF-INCRIMINATION SHOULD BE AVAILABLE TO A WITNESS QUESTIONED BY THE CRIMES COMMISSION. THIS ISSUE APPEARS TO BE CLOSELY RELATED TO THE QUESTION JUST MENTIONED WHETHER THE ROLE OF THE COMMISSION SHOULD EXTEND TO THE ASSEMBLING OF EVIDENCE FOR THE PROSECUTION.

THE EXCUSE IS NOT AVAILABLE TO WITNESSES BEFORE A ROYAL COMMISSION BUT ITS ABSENCE IS BALANCED BY PROVISIONS TO MAKE A WITNESS'S ANSWERS INADMISSIBLE AGAINST HIM EXCEPT IN A PROSECUTION FOR PERJURY. THE JUSTIFICATION FOR THIS BALANCE OF PROVISIONS IS THAT THE FUNCTION OF A ROYAL COMMISSION FOCUSSES ON ASCERTAINING THE FULL FACTS OF A PARTICULAR MATTER AND NOT ON THE PARTICULAR OBJECTIVE OF ASSEMBLING EVIDENCE FOR PROSECUTIONS.

HOWEVER, IF THE ROLE OF THE CRIMES COMMISSION IS TO EXTEND TO ASSEMBLING OF EVIDENCE FOR THE PROSECUTION, QUITE DIFFERENT CONSIDERATIONS APPLY.

THE INTENTION WOULD THEN BE THAT THE EVIDENCE GIVEN BY A WITNESS WOULD BE AVAILABLE FOR USE IN SUBSEQUENT PROCEEDINGS WHETHER AGAINST HIM OR SOME OTHER PERSON. THAT BEING SO, LONG ACCEPTED PRINCIPLES APPEAR TO REQUIRE THAT THE EXCUSE OF SELF-INCRIMINATION SHOULD BE AVAILABLE TO THE WITNESS.

WHETHER THE EXCUSE OF SELF-INCRIMINATION SHOULD APPLY TO DOCUMENTS IS ONE MATTER ON WHICH THERE APPEAR TO BE PARTICULARLY STRONG DIFFERENCES OF OPINION. ON THE ONE HAND IS THE VIEW THAT PURSUIT OF DOCUMENTARY EVIDENCE SHOULD BE A VITAL PART OF THE CRIMES COMMISSION'S ACTIVITIES. ON THE OTHER, IS THE VIEW THAT IT WOULD BE INCOMPATIBLE WITH THE COMMISSION'S ROLE OF ASSEMBLING EVIDENCE FOR PROSECUTION FOR A WITNESS TO BE DEPRIVED OF THIS EXCUSE.

AS A RESULT OF AMENDMENTS MADE TO THE NATIONAL CRIMES COMMISSION ACT DURING THE COURSE OF ITS PASSAGE THROUGH PARLIAMENT, THE EXCUSE UNDER THE ACT IS CONFINED TO NATURAL PERSONS.

HOWEVER, BEFORE DEVOTING TOO MUCH TIME, ENERGY AND EMOTION TO THIS PARTICULAR ISSUE, IT MIGHT BE WISE, I SUGGEST, TO EXAMINE WHETHER APPLICATION OF THE EXCUSE TO PRODUCTION OF DOCUMENTS BY NATURAL PERSONS WILL HAVE ANY REAL PRACTICAL EFFECT.

THESE ARE NOT OF COURSE THE ONLY CONTENTIOUS ISSUES. THERE ARE QUITE A NUMBER OF OTHER ISSUES THAT ARE TO SOME DEGREE CONTENTIOUS; TO MENTION SOME, THE WIDTH OF THE COMMISSION'S JURISDICTION, WHETHER THE COMMISSION SHOULD IDENTIFY SUSPECTED OFFENDERS IN ITS PUBLIC REPORTS, ACCOUNTABILITY OF THE COMMISSION, WHETHER THE COMMISSION SHOULD OR SHOULD NOT BE HEADED BY A JUDGE AND THE ROLE OF THE STATES AND THE NORTHERN TERRITORY.

AS TO THIS LAST MENTIONED ISSUE, CLEARLY THE MOST SATISFACTORY ARRANGEMENT SO FAR AS LAW ENFORCEMENT GENERALLY IN AUSTRALIA IS CONCERNED IS TO HAVE FULL PARTICIPATION BY THE STATES AND THE NORTHERN TERRITORY IN THE WORKING OF THE CRIMES COMMISSION.

SHOULD THE STATES WISH TO PARTICIPATE IN THE COMMISSION, THE EXISTING ACT PROVIDES FOR TWO POSSIBLE WAYS BY WHICH THIS CAN BE DONE.

FIRST, THE COMMISSION CAN BE EMPOWERED BY A STATE LAW TO EXERCISE FUNCTIONS IN RELATION TO BREACHES OF STATE LAWS CORRESPONDING TO THOSE IT WILL EXERCISE UNDER THE ACT IN RELATION TO BREACHES OF COMMONWEALTH LAWS.

SECOND, A STATE GOVERNOR OR MINISTER CAN CONFER, WITH THE CONSENT OF THE COMMONWEALTH ATTORNEY-GENERAL, PARTICULAR FUNCTIONS OR POWERS ON A MEMBER OR MEMBERS OF THE COMMISSION. THUS, IF THE COMMONWEALTH ATTORNEY-GENERAL CONSENTS, A STATE GOVERNMENT WOULD APPOINT ONE OR MORE MEMBERS OF THE NATIONAL CRIMES COMMISSION AS ROYAL COMMISSIONERS FOR STATE PURPOSES AND THESE PERSONS COULD EXERCISE STATE FUNCTIONS CONJOINTLY WITH THEIR COMMONWEALTH FUNCTIONS BUT, SO FAR AS STATE FUNCTIONS WERE CONCERNED, WITHIN THE LIMITS SPECIFIED BY THE STATE.

MY GOVERNMENT HOPES THAT STATE GOVERNMENTS WILL FULLY PARTICIPATE IN THE WORKINGS OF THE CRIMES COMMISSION. TO THIS END, WE ARE KEEN TO DISCUSS WITH STATE GOVERNMENTS WAYS AND MEANS BY WHICH THIS MAY BE DONE. IF ANY INTERESTED PARTIES WISH TO ADVANCE DURING THE COURSE OF THE CONFERENCE WAYS AND MEANS OF FACILITATING STATE PARTICIPATION THEY SHOULD BY ALL MEANS DO SO AND THEIR SUGGESTIONS WILL BE VERY CAREFULLY CONSIDERED.

WE SHOULD NOT THINK THAT A CRIMES COMMISSION WILL BE A PANACEA FOR ORGANIZED CRIME. ESTABLISHMENT OF A CRIMES COMMISSION WOULD ONLY BE ONE PART, ALTHOUGH A VERY IMPORTANT PART, OF A PACKAGE SO FAR AS THE FIGHT AGAINST ORGANIZED CRIME IS CONCERNED.

GOVERNMENTS NEED TO ADDRESS THIS FIGHT AT ALL LEVELS RANGING FROM REVIEWING AND UP-GRADING POLICE RESOURCES TO MODERNIZING THE CRIMINAL LAW AND THE PROCEDURES OF THE COURTS TO MINIMIZE DELAYS IN THE BRINGING OF OFFENDERS TO JUSTICE. IN REVIEWING THE LAW WE NEED TO BE CONSCIOUS OF THE NEED TO REMOVE FROM THE STATUTE BOOK ANY OFFENCES THAT THE COMMUNITY NO LONGER CONSIDERS REPREHENSIBLE.

THE OBJECTIVE OF ALL OF US GATHERED HERE AT THIS CONFERENCE IS THE PROTECTION OF AUSTRALIAN SOCIETY FROM HARMFUL DEVELOPMENTS IN CRIMINAL ACTIVITIES, WHICH RECOGNISE

NO BOUNDARIES, STATE OR NATIONAL. THERE IS A PUBLIC EXPECTATION THAT THIS CONFERENCE WILL ACHIEVE SIGNIFICANT RESULTS IN CLEARING THE GROUND FOR EFFECTIVE ACTION IN THIS REGARD AND WE MUST TRY TO ENSURE THAT THOSE EXPECTATIONS ARE NOT DISAPPOINTED.

WHILE AGREEMENT IN EVERY DETAIL CANNOT REASONABLY BE EXPECTED IN YOUR DELIBERATIONS, AND WHILE TODAY IS NOT AN OCCASION NOR THIS CONFERENCE A FORUM APPROPRIATE FOR FORMAL DECISION-MAKING, I HOPE AND TRUST THAT, BEARING THE ULTIMATE OBJECTIVE IN MIND, NONETHELESS, A CONSIDERABLE MEASURE OF CONSENSUS WILL EMERGE HERE AS TO THE ACTIONS THAT NEED TO BE TAKEN BY ALL AUSTRALIAN GOVERNMENTS. AIDED BY THAT COUNSEL, AUSTRALIAN GOVERNMENTS WILL, I BELIEVE, BE GREATLY ASSISTED IN REACHING THEIR DECISIONS AS TO ACTION TO BE TAKEN TO FIGHT THE INSIDIOUS GROWTH OF ORGANIZED CRIME IN OUR COUNTRY.