



PRIME MINISTER

GOVERNMENT'S RESPONSE TO FINAL REPORT OF ROYAL COMMISSION INTO THE ACTIVITIES OF THE FEDERATED SHIP PAINTERS AND DOCKERS UNION

5

Release of Final Report

The Government is releasing Volumes 1 to 5 of the Costigan Commission Final Report. This is in accordance with the strong recommendation of the Royal Commissioner (at paragraph 1.025 of Volume 1 of the Report). The Government is also releasing an appendix volume containing Appendices 1A, 1B and 1C, which list the public witnesses, their representatives and public exhibits.

There are another six substantive volumes which Mr Costigan recommended, and the Government accepted, should remain confidential. Mr Costigan has said (at paragraph 1.024 of Volume 1) that he made such recommendations in some cases because persons are on trial and in other cases because highly sensitive current investigations could be impeded, if not destroyed, by disclosure. (In addition, some appendix volumes have not been published because of similar concerns, because of the need to protect the security of the systems passed to the NCA or because they contain material published elsewhere).

Within three of the five substantive volumes published, certain deletions have been made - identified by blank spaces in certain parts of those volumes. As I had informed the Parliament would occur, these deletions were based on the advice of the Government's legal and law enforcement advisers. The Victorian Government and its advisers were also involved in this process and the deletions were brought to Mr Costigan's attention.

Agreement was reached between the Commonwealth and Victorian Governments that certain limited deletions should be made. In Volume 1, certain names of individuals and companies have been deleted on the

strong advice of the Commonwealth and Victorian Directors of Public Prosecutions in order to avoid prejudice to certain current and imminent prosecution proceedings. Only 12 pages are affected - pp 86-91, 100-101, 104-106, 113. In Volume 3, certain material at pages 31-33 which might have identified an individual has been deleted on the strong advice of the Victorian Director of Public Prosecutions to avoid prejudice to a current prosecution. In Volume 5, certain material (pages 29-72) about the activities of a drug trafficker which, if revealed, might impede investigations has been deleted on the strong advice of the National Crime Authority.

My assurance to the Parliament - that the decisions on what would or would not be tabled or published would in no way be affected by political considerations - has accordingly been completely honoured.

Just three days after my Government received the Final Report, I made available a complete copy to the Leader of the Opposition (with the exception of 3 appendices containing highly sensitive and technical material relating to the Commission's computer system - Mr Peacock is aware that only a very restricted number of copies of this sensitive material was presented to the Commonwealth by the Commission). Mr Peacock has assured me that the confidential material will be completely protected.

The release of the final report of the Costigan Commission puts to rest the irrational claims and behaviour of the Opposition on the crime issue.

Firstly, it sinks without trace the charge made by the Opposition Leader on 3 October 1984, that:

".... We are going into an election campaign without Mr Hawke allowing the Australian people to know what is in the Costigan Report.... Australia is entitled to know the extent to which this sophisticated network of organised crime is taking over this country. And yet the Prime Minister is not going to allow that to occur. This man is trying to walk away from telling Australians just what the extent of the threat is."

Secondly, it buries the claim that in any way this Government had something to fear from the Costigan Commission Report as I said on 20 September:

"The Government has no reason to believe that the Costigan Commission's investigations will reflect adversely on it."

That judgment has been vindicated by both the Report and the Royal Commissioner himself.

Finally, after muted threats to leak material properly deleted from the Report, as I have noted above, the Opposition Leader has conceded that the deletions are appropriate.

Yet again the Opposition Leader has been revealed as one who is prepared to make the wildest allegations without any foundation in fact. This will further confirm the judgment of the Australian people as to his unfitness for the office to which he aspires.

Overview of Final Report

Mr Costigan's Final Report, both in its published and unpublished volumes, represents his important overview of the state of organised crime in Australia. It confirms the picture sketched by Mr Costigan in his five interim reports, of widespread white-collar criminal activities involving tax offences, offences against company law, drug importations and many others, as well as substantial linkages to blue-collar criminal activity. It renders all the more important the Labor Government's unequivocal commitment to total support for a sustained fight - without fear or favour - against organised crime.

The remarkable evolution of the Costigan Royal Commission, as it pursued the labyrinth of organised crime, began from the Painters and Dockers Union. In Volume 3 of his Final Report, Mr Costigan concludes that union employees have engaged in manifold criminal activities - including tax fraud, social security fraud, ghosting, compensation fraud, theft on a grand scale, extortion, the importation of drugs, the shipment of armaments and all manner of violence.

By the end of its evolution, the Costigan Commission had also made a significant contribution, so confirming the results of previous major inquiries of the past decade, to the exposure of the role of organised crime in drug trafficking. Thus certain of the unpublished confidential volumes relate to unfinished inquiries into drug-related matters. Mr Costigan also refers to having monitored, during the last two years, various drug offenders, and in the course of this action, having uncovered a range of further criminal activities. Arrests and prosecutions have resulted from information

obtained analysed and disseminated by his Commission; joint action by drug enforcement and taxation authorities has been encouraged. A number of unfinished drug-related investigations have been referred to the National Crime Authority; these are now under active consideration.

My decision to request the Royal Commissioner in April 1983 to concentrate his further investigations on drug trafficking has been amply vindicated - it is, as Mr Costigan puts it, a "particularly nauseating" area of crime.

Exposure of tax frauds and related tax evasion schemes has undoubtedly been a major achievement of the Costigan Commission, as witnessed by its disclosure of the bottom of the harbour schemes and the substantial number of consequential prosecutions by Special Prosecutor Redlich. At July 1983 tax assessments of \$25m had issued as a direct result of the Commission's activities, a figure Mr Costigan believes has increased significantly during the last 15 months. Mr Costigan refers to Special Prosecutor Gyles' identification of 6206 companies involved in bottom of the harbour schemes and revenue collection which has netted the Government \$333m, with \$257m remaining to be collected. The enduring impact of the Costigan Commission on investigation, prosecution and recovery action in relation to tax fraud in Australia is thus indisputable.

A reading of the Final Report discloses that the Costigan Royal Commission has consciously sought and developed a high degree of co-operation with law enforcement agencies throughout Australia. It deliberately focussed on major targets within its terms of reference and adopted a practice of referring lesser matters - for example, social security and workers' compensation frauds - to relevant agencies. Amendment to the Royal Commissions Act was sought and granted to enable dissemination (otherwise than through formal reports) of information to law enforcement agencies; in addition to convictions already obtained, numerous investigations and prosecutions by agencies throughout Australia are continuing as a result.

Mr Costigan also adopted the practice of referring major matters to other bodies for the final investigative processes leading to arrest, charge and prosecutions. Creation of the Special Prosecutor's Office was in recognition of, and assisted in, this practice; the creation by this Government of the Office of Director of Public Prosecutions has enabled the effective continuation of the practice.

Acknowledgement of the Costigan Commission's unique development of investigative techniques in relation to organised crime is particularly warranted. The Commission has concentrated both on documentary evidence in seeking to follow the paper trail and upon the development of sophisticated computer information management systems; and has done so in two major areas: the accrual of criminal wealth, as traced through the financial system, and the manifestation of criminal organisation as demonstrated through the association of individuals. The capacity to do so was greatly enhanced by the more than doubling of the financial resources of the Commission under this Government, and the substantial increase in its staff. The bulk of the Commission's staff, skilled in these investigatory techniques and the technology upon which they vitally depend, has been transferred to the NCA, which now carries the baton of this Government's commitment to the fight against organised crime.

Comments on National Crime Authority (NCA)

Not surprisingly, Mr Costigan's report includes many references to the National Crime Authority (NCA). Chapter 9 of Volume 1 deals with the transfer from the Royal Commission to the NCA; in various sections, Mr Costigan points to what he considers to be inadequacies in the National Crime Authority legislation; finally the NCA features in the recommendations: one change to the NCA plus a number of matters to be investigated further by the Authority.

Thus, despite the Opposition's criticisms of recent times, Mr Costigan has only made one explicit recommendation for change to the NCA legislation.

Transition

Mr Costigan devotes Chapter 9 of Volume 1 to the transition to the NCA. It is mainly an historical account, drawing heavily on correspondence between himself and the present and former Governments, much of which has already been tabled.

Mr Costigan raises two specific concerns regarding the transition:

- . the possible prejudice to future investigations by the publication of the summaries in the National Times - a concern shared by the NCA and this Government; and
- . the lack of time to conduct briefings.

Much has already been said on this latter point. As noted in the report, Senior Counsel was able to give some briefings in the Commission's last days. Mr Costigan draws a parallel to the time taken by Special Prosecutor Redlich and Gyles and the Director of Public Prosecutions, Mr Temby, to fully understand the Commission's operations. There is one great, overwhelming difference - the NCA has absorbed almost all of the Commission's staff, fully versed in the Commission's operating techniques, computer system, extensive data base and outstanding investigations. It has thus assimilated the accumulated knowledge of the Costigan Royal Commission.

Mr Costigan also refers to a "substantial", but inevitable, hiatus in continuing his operations. The Government does not accept that there has been a substantial delay. The Authority wasted no time in resolving on 18 July to investigate the Commission's outstanding investigations. Given the important objective of the Authority subsuming the Commission's staff, it was not able, of course, to become fully operational until the Commission staff had completed their work on the final report. That has now happened and the Authority is up and running, with fully trained staff and an extensive computer system.

Importantly, the report in no way criticises the NCA for its part in the transition. Indeed, it notes that only one day after receiving the Commission's summaries of outstanding investigations, the Authority resolved to investigate these matters and requested access to all documents held by the Commission.

Legislative Criticisms

Mr Costigan's criticisms of the Authority's statutory framework fall into three main areas:

- . the need for the Authority to seek specific references;
- . insufficient access to taxation records; and
- . inability of the NCA to expose an individual's involvement in criminal activities.

Mr Costigan urges removal of the requirement in the NCA Act for references to be given by the Ministerial Committee to the Authority before the Authority can exercise coercive powers as to a specified subject matter of inquiry. He assumes that the references to be given by Governments to the Authority will go into such detail that, if they become public, reputations of

persons referred to will suffer.

The security of such information is, of course, very important. The Government, however, is not convinced that appropriate procedures and safeguards (e.g. oral briefings in the most sensitive of cases) cannot be set in place. In fact, I have already written to the Special Minister of State, who is the Chairman of the Inter-Governmental Committee, requesting that he take up these matters with the NCA to ensure appropriate security and that briefing arrangements are put in place.

In considering the form of the references to be given to the NCA there is not only the concern referred to by Mr Costigan that references might identify persons to the prejudice of their reputations, but the further concern lest references be expressed so broadly that they impose no effective limit on the area of a special enquiry by the Authority.

However, in the drafting of the first references given by the Commonwealth Minister to the NCA on 19 October 1984, deliberate care was taken to ensure that both concerns were met. Thus, the two references did not identify individuals and, by referring in the references to additional information furnished to the Minister, reasonably clear limits were placed on the Authority's areas of inquiry.

It must be emphasised that the Authority may undertake a general investigation within its very broad statutory charter without a reference, and it is only when it requires to exercise coercive powers that a reference is needed.

For the Government to allow the Authority to exercise these special coercive powers otherwise than under a reference of a specified subject matter of inquiry would be an abdication of the Government's proper responsibility and the great majority of the community would, I am sure, be greatly concerned if restraints on the exercise of the special powers were removed.

Mr Costigan expresses disappointment that the NCA will not have the same access to taxation records as he has had. The NCA does, of course, have access to taxation information. In relation to tax-related investigations the Commissioner of Taxation may pass information direct to the NCA. In other cases, the Authority must first obtain a warrant from a Federal Court Judge. This is considered an appropriate balance between the need to protect individual privacy and to allow the NCA access to relevant information. The Opposition did not oppose or

move to amend this when the legislation was debated.

Mr Costigan considers it a weakness in the NCA's armoury that it does not have the power to hold public hearings and to report upon identities. He considers it a particular handicap in the fight against drug trafficking, and indeed to overcome this, proposes a Taxation Investigation Tribunal and a new Royal Commission to investigate a particular matter.

The importance of public exposure as a deterrent is one of the central themes of the Commission's final report. Mr Costigan acknowledges, however, that this very fundamental issue was fully considered by the Senate Select Committee to which both Mr Costigan and his Senior Counsel gave evidence - and indeed by the Government in developing the legislation. Public hearings and reports were, however, specifically rejected, primarily on the ground that a person's reputation should not, as a general rule, be prejudiced or put at risk unless and until he or she becomes subject to the ordinary process of the criminal or civil law. This is a quite legitimate difference of opinion about the best way to tackle organised crime.

This raises important issues which ought to be re-stated here. There has been considerable debate as to what model the Government ought to adopt in establishing a permanent body to lead the fight against organised crime and to follow up the important start made by the Costigan Commission. As instanced earlier, views differ on almost all points.

Mr Justice Stewart's comment on 26 September, however, is very pertinent. He said:

"....the function of a Royal Commission is completely different to the function of a National Crime Authority. The function of a Royal Commission is completely different to the function of a National Crime Authority. The function of a Royal Commission is to identify areas of crime, to point in the right direction. A Royal Commission is not a body that seeks to accumulate hard evidence and Mr Costigan has already indicated that he hasn't seen this task as that, he hasn't wanted to do it, he hasn't tried to do it But the function of the NCA accumulating hard evidence is quite a different function"

The Government and the members of the Authority are confident that the Crime Authority has the appropriate powers and resources to do the job. It has a mix of powers specifically designed for the task - powers which in some areas go beyond those of a Royal Commission. It

has taken over almost all of the resources of the Costigan Royal Commission - staff trained in the Commission's investigative techniques - all of the information collected, and the Commissioner's computer system and extensive data base. Furthermore, all Australian Governments have advised of their support for and co-operation with the NCA.

The Government has also made it clear that should members of the Crime Authority form the view that they require an extension of their power, then it will respond quickly and sympathetically to any such request.

The Government is not alone in believing the Authority can meet the challenge ahead.

Previous recommendations

In Volume I of his Final Report, Commissioner Costigan lists recommendations contained in his Interim Reports 3, 4 and 5. (Interim Reports 3 and 4 were presented to the previous Government; Interim Report 5 was presented to the Labor Government in July 1983). Additionally, Mr Costigan adverts to his understanding about what action the Government has or has not taken on them.

Prior to the announcement of the election, decisions had been taken or action was in train, in respect of all of Mr Costigan's recommendations emanating from Interim Reports 3, 4 and 5.

Mr Costigan's recommendations concerning amendments to the Income Tax Assessment Act, contained in his Interim Report 3, were incorporated in amendments to the Income Tax Assessment Act passed in 1982. Subsequently, this Government passed the NCA (Consequential Amendment) Act 1984 which enables Royal Commissions to pass taxation information they have received to the NCA.

In respect of Mr Costigan's recommendations concerning the establishment of a Special Task Force to investigate and prosecute criminal and civil cases contained in Interim Report 4, Special Prosecutors Redlich and Gyles were appointed. Their work will now be carried on by the Director of Public Prosecutions Office created by this Government.

In respect of Mr Costigan's recommendation in Interim Report 5, that attention be paid to an appropriate degree of co-operation between the Office of the Director of Public Prosecutions and State prosecution agencies, Mr Temby has indicated that he is conscious of the need to bring about co-operation between his Office and State authorities and he is taking steps to that end.

In respect of Mr Costigan's recommendations in Interim Report 5, concerning exchange controls, they were significantly affected by the Government's new foreign exchange arrangements, a point acknowledged by Mr Costigan in Volume I of his Final Report.

In respect of Mr Costigan's recommendations in Interim Report 5 concerning corporation controls, the Government has endorsed the Ministerial Council's decision of 16 December 1983 to approve in principle the desirability of achieving a national information system on shareholdings. This should substantially meet the objectives of Mr Costigan's proposals.

In respect of Mr Costigan's recommendations in Interim Report 5 concerning mining reserves, the Government has agreed that the Petroleum (Submerged Lands) Act be amended to clarify and strengthen provisions relating to the approval and registration of agreements between parties holding or acquiring interests in petroleum titles. The recommendations on Mining and Petroleum have been brought to the attention of State and Northern Territory Ministers, and the Minister for Resources and Energy had been undertaking consultation with his State and Territory colleagues on proposed amendments to the Petroleum (Submerged Lands) Act.

In respect of Mr Costigan's remaining recommendations in Interim Reports 4 and 5, concerning amendments to Section 16 of the Income Tax Assessment Act, tax controls, banking controls, and overseas arrangements, extensive consultation has taken place on these far-reaching recommendations. In each area, firm proposals had been prepared which can be considered after the election.

Mr Costigan's Final Recommendations

Mr Costigan's principal recommendations are summarised in Chapter 10 of Volume 1 of his report.

Mr Costigan makes a number of recommendations relating to the strengthening of existing legislation or new legislation for the fight against organised crime in Australia. Some of these also involve State

Governments, with whom the Federal Government will need to work closely in considering the recommendations. These include, for example, proposals for new agencies such as the Port Security Authority, Taxation Investigation Tribunal and Taxation Investigation Office.

In its formal response to these recommendations, the Federal Government will also wish to have the detailed advice of the NCA, the Commonwealth DPP and the AFP, they now have independent statutory responsibility for the investigation and prosecution of offences against Commonwealth law. As the Government has consistently made clear, it will respond quickly and sympathetically if it should be evident that their existing powers are inhibiting these organisations in the fight against organised crime. Any formal changes to their existing powers would, of course, be a matter for decision after the caretaker period.

Mr Costigan makes a number of recommendations regarding ongoing investigations and prosecutions. The full report is now in the hands of the NCA, the Commonwealth DPP and AFP and under their statutory powers they do not need any formal direction from the Federal Government to proceed with the gathering of admissible evidence or prosecutions if they judge such courses to be appropriate in the light of the report. However, should the Government receive any recommendations requiring immediate action from these bodies during the caretaker period, such action will be immediately taken by the Government.

As to recommendations concerning the setting up of investigations outside the framework of the NCA the Commonwealth DPP, and the AFP, the Federal Government takes the view in principle that the NCA, the Commonwealth DPP and the AFP are the bodies to which the Federal Government, with the support of the States in the case of the NCA, has entrusted the leading role in the fight against organized crime in Australia. It is not only logical but essential that the Government should give them full support in that fight. Formal decisions on these recommendations should, of course, properly wait until the end of the caretaker period.

Ongoing Investigations/Prosecutions

Apart from ongoing investigations/prosecutions referred to in the Final Report (including the Confidential volumes), Mr Costigan's staff were also attending to a number of ongoing inquiries. The Commission also passed to the NCA a number of completed or well advanced analyses of investigations into drug-related matters.

These current investigations and prosecutions are now the subject of action by the NCA, the Commonwealth and Victorian DPPs, and the AFP. Mr Costigan's investigations have therefore been continued - in none have the trails gone cold.

Moreover, the resources of the Costigan Royal Commission have now been transferred to the NCA: the Commission's computer database and system; the analyses prepared by the staff of the Commission: the material contained in reports of the Commission, including the full, unexpurgated final report; one of the Commission's junior counsel; most of the solicitors who have been engaged in conducting Mr Costigan's operations; and accountants, analysts, collators and other staff who have been involved in Mr Costigan's operations. There can be no doubt that, as Special Prosecutor Redlich said at page 48 of his recent report, "the Authority has the scope to maintain the initiatives developed by the Costigan Royal Commission".

Mr Costigan has recommended that the activities and affairs of certain persons mentioned in the confidential volumes be closely monitored and investigated by all relevant law enforcement agencies including the NCA, the Australian Taxation Office, Australian Customs Service, corporate affairs offices, bankruptcy offices and law enforcement agencies in the United States. It will fall to the incoming Government to address these matters and to give such further directions as may be considered necessary.

Civil Liberties Issues

Some of the material in the published Volumes posed difficulties for the Government because of the Government's strong commitment to civil liberties. This material relates to the naming of certain individuals. Mr Costigan argues at some length that exposure of suspected criminal activities by public reports of Royal Commissions and like bodies before conviction of the persons concerned and, indeed, even in circumstances where conviction is unlikely, is a proper and effective means of dealing with those activities. On this basis Mr Costigan has named a considerable number of persons as suspected of committing offences or being in some way involved in the commission of offences.

The Government strongly believes that such a course is normally neither correct in principle nor effective in final result. It believes that persons should not be named in public reports as having committed, or as being suspected of having committed, offences unless duly

convicted in the courts of law. To do so would make a mockery of the rule of law, of the long-standing presumption of innocence before conviction and of protections that should be afforded by the law to every citizen.

In the circumstances surrounding this Report, however, the Government believes it has no alternative to deciding that deletions should be confined to those made on narrow legal and law enforcement grounds which I have described. With considerable reluctance the Government has decided that no deletions should be made because of the civil liberties considerations mentioned above, many of which are almost certainly applicable. This decision has been taken for two primary reasons:

- . given the nature and structure of Mr Costigan's Report, it would not be practical to delete all references to persons named as being involved in the commission of offences - to delete all such references would make the Report, to a large extent, meaningless; and
- . there has been a high degree of public expectation in relation to this Report resulting from the breaches of confidentiality that have occurred by publication of material in the National Times, and the cheap and dishonest political posturing by the Opposition that the Government had something to hide. The substantial deletion of names would therefore be likely to lead to community concern and misunderstanding.

For the reasons stated the Government's profoundly regrets the course of action that has been necessary in this instance, and it is important to note that the National Crime Authority Act makes provision to ensure that this cannot happen in the case of the NCA. The Government does not believe that naming of persons in public reports is an effective or appropriate alternative to the processes and sanctions of the law of the land.

Conclusions

Finally I should like to extend, on behalf of all concerned Australians, our sincere appreciation for the application and dedication with which Mr Costigan and his staff have approached the important tasks they were given by successive Governments, tasks which expanded from limited objectives into the investigation and exposure of organised crime.

There have, as Mr Costigan acknowledges, been frank and

robust differences of view, from time to time, between his Commission and both my Government and the former Government. As I have earlier noted these have been legitimate differences of opinion about the best way to tackle organised crime. But, as Mr Costigan records, there has never been any doubt that the Government was anxious to maintain the attack on organised crime. Under the auspices of the NCA and relevant agencies and with undoubted community support, the Government as Mr Costigan acknowledges will continue to take all action to stamp out organised crime.

1 November 1984