



PRIME MINISTER

TRANSCRIPT OF THE PRIME MINISTER, THE HON P J KEATING, MP
PRESS CONFERENCE, 14 MAY 1992, CANBERRA, WA ROYAL COMMISSION

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PM: Well thank you for coming. I have issued a statement to you today saying that recent statements by Mr Templeman, a Barrister servicing the West Australian Royal Commission, and today's statement by the West Australian Commission Chairman, Mr Kennedy, that the Commonwealth Government has impeded the ability of the Commission to obtain tax information. Both of those statements are incorrect.

The Commonwealth Government has been seriously and wilfully maligned on this issue. Now today I have received advice from the Commissioner of Taxation, or the Treasurer has, and he has passed it on to me, that a Western Australian Police Unit is working with the Royal Commission, and that this Unit is empowered to seek tax information from the Australian Tax Office. And that minute which you have in front of you with the number 4 at its top says, that an amendment to the act in 1989, Section 3(e) was inserted to the taxation amendment act to allow controlled access for nominated law enforcement agencies to tax information. Provision authorises me, that's the Commissioner, to provide tax information if I am satisfied the information is relevant to establishing whether a serious offence has been, or is being committed. And he goes on to say over the page, "It's my understanding that the Western Australian Police have a Unit working with, and assisting the Royal Commission in that State. Section 3 allows us to provide tax information to that Unit for the purpose of its investigation of a serious offence". "In other words, as to serious matters there is potential for us to assist the Royal Commission, says the Commissioner. This facility was explained by my office in Perth, to the Royal Commission staff early in the process, and we would have supplied available information had the Police asked for it. In fact there have been no Police requests for information". He goes

have been no Police requests for information". He goes on to say he understands his Deputy Commissioner in Western Australia and his staff are maintaining close liaison with the Commission. And importantly in the last paragraph, last sentence he says, the Commissioner, Mr Boucher says "We stand ready to assist the Royal Commission by supplying information to its Police Unit, as authorised by Section 3(e)." Now the fact is that was explained to the Western Australian Royal Commission in February in 1991 and the Commission has not availed itself of the use of that provision. That provision was inserted after the Government agreed to give tax information to the Fitzgerald Royal Commission. Now what the West Australian Royal Commission sought, was not the power of information about offences and the prosecution of offences, or information on specific offences, serious offences, but a broader power to require of the Commissioner, that any information requested be provided to the Royal Commission.

In other words, what the Commissioner calls a "fishing licence", that is, to be asking for information broadly. So any Western Australian, any Australian, associated with, in any way, with any person under investigation by the Commission can have their tax returns made available to the bevy of Queens Councillors and Commission staff, as the Commission so decides. And the Commonwealth has always taken the view this is unwarranted invasion of the secrecy provision to the Tax Act and the privacy of Australians. And that for serious crime there were no practical impediments to the Commission seeking information.

Now the Commissioner has made his position clear on that point. Again in the minute number 4 he says, "Again I indicated previously the type of access which the Fitzgerald Commission enjoyed was a wide one. It was to information needed for the purposes of the inquiry, if and when the Royal Commissioner asked for tax files I was in no position to gain say his claim. That release of the information was authorised by the enabling provision". In other words, that is the broad form of the provision will allow requests of even a fishing kind.

In other words, the great phalanx of Tax Lawyers and Barristers who fill up the first class compartments of Ansett and Australian, from Melbourne, to Sydney, to Perth every week and to go back with their brief cases bloated with papers, can go back bloated with the tax returns of West Australians and Australians generally. And the Government quite correctly said no to that, no to that. But we also said that we would facilitate information. Now it is not just simply a matter of me agreeing with a recommendation of the Commissioner, so to did Mr Willis for the same reasons. And the

Commissioner put his view again forcefully in the minute headed 2, which I have given to you. On my advice the Western Australian Commissions request for access was rejected, he told Mr Willis. And he went on to say "I would like to reiterate my view that the confidentiality of income tax information is important to the administration of the tax laws. I do not consider this position should be further eroded by giving access to the Western Australian Commission". And at the bottom he goes on to say, "I again recommend that the Government not support the Western Australian Commissions request for access to income tax information". And he makes clear in the letter headed 2, that the granting of access to information for the Gyles Royal Commission in NSW was also refused on the same basis.

Now, can I just say a couple of other things about Mr Templeman and his remarks the day before yesterday. And I refer to the Transcript which I think we have included in the papers I have given you, it is the document headed 5. At the bottom of the page under exhibit 3147, about 1/3 down the page, at the last paragraph Mr Templeman says, "The Treasurer then referred to the existing law, and concluded by saying that in the present case any request for pacific assistance could be made in the context of an investigation, subsequent to the completion of the Royal Commission, provided the information sought relates to a particular offence by a specified person, and there in of course, with respect, lies the difficulty of identifying the particular offence or specifying a person at this stage of the inquiry.

How could there be any difficulty at this stage of the inquiry? At this stage the inquiry's reaching its final stages. And is Mr Templeman asserting that even after 210 days of sittings, 497 witnesses, 31,000 pages of transcripts, 3200 exhibits, a staff of 15 to 18 and 6 senior counsel, at a cost so far of \$16 million, that he couldn't even talk about a specified person, and there in of course with respect he said, or a particular offence or specifying a particular person at this stage of the inquiry. I mean, doesn't it strike you as strange that at this stage of the inquiry, that this Commission having run this period, can't put a request through its Police Unit to the Tax Commissioner for information about a specified offence, concerning a specified person. Because that's in fact, what is being said.

Now as I said yesterday, I am not interested in the apologia, or excuses by highly paid Barristers, counsel, Servicing Commissions, in giving us some for taste, or portending, the progress of the Commission. I am interested only in the possibility of serious crimes being dealt with, and being dealt with in a conclusive way.

And I refer you in that respect to Mr Hartnell, who on 3 May 1991, the Australian Financial Review, had this to say, he said he did not think very kindly of Royal Commissions at this time, "I am merely saying that the public has to understand every time you have a Royal Commission it delays trials. The Royal Commission are ensuring that the bloodlust doesn't come to early fruition. When there is an investigative force professionally set up to investigate an agreement and charged with bringing actions under lawful investigations, I am frankly not in favour of Royal Commissions. At the present time obviously there are huge criminal actions being brought which we are bringing through the Office of the Crown Prosecutor in Western Australia". And he went on to say that certain trials could be deferred by up to two years because of the Western Australian Royal Commission. Now Mr Hartnell's Security Commission is one of the Parties provided with access to tax information, and I might add if you look again at minute 4, so is the NSW Independent Commission against Corruption and the NSW Crimes Commission.

So those elements of the media who yesterday published or telecast Dr Hewson's mealy mouthed statement that the Government had acted in a preferential way, so as to protect so called "Labor Mates", might indicate to the public that a commission which was set up supposedly to investigate corruption under the former NSW Labor Government, was given access to the Tax Office explicitly by an Act of Parliament. So that should at least demolish that argument.

Could I just make a couple of other points. In a note for file by an Australian Tax Commission officer on 19 February 1991, he said this, " I also outlined Section 3(e) of the Tax Administration Act as a possible alternative means that the Commission could use to pursue access to ATO information. However, reservations were expressed as to the many problems that could be encountered". Wicks stated that they would not consider this option.

Now this is a very high handed approach by Mr Wicks. When a tax officer explained that an avenue of tax information is available, they said well thank you for the explanation and the offer, but thank you, but no thanks. Thank you but no thanks. The Commissioner is again repeating the offer today in his minute to Mr Dawkin's where he says, the Tax Office stands ready to assist the Royal Commission by supplying information to its Police Unit as authorised under Section 3. And I refer you also to the introductory note for the legislation of Section 3(e) which says this: "broadly proposed Section 3(e) provides the Commissioner of Taxation with the discretion to disclose taxation information to an authorised law enforcement agency

officer. Such disclosure is conditional on the Commissioner being satisfied that the information is relevant to the investigation of a serious crime or post convictions, confiscation and restraining order proceedings. The information may be disclosed by the Commissioner either on his own initiative or in response to a request by a law enforcement agency officer," and it goes on but they're the main points.

"Such disclosures are conditional on the Commissioner being satisfied that the information is relevant to the investigation of a serious offence". I should of thought the whole point of the investigations in Western Australia were the investigations of serious offences.

But if the notion is that the Commission only needed a fishing licence approach to the tax system, to call up tax files of all citizens in this country at the behest of the Commission or councils before the Commission and that the question of serious offences was not an important consideration in that request by the Commission to the Government, but begs the question what does a Commission see as its purpose.

I think I'll conclude on this point, the Commissioner of Taxation has deemed Section 3(e) available to the Commission as an investigation process of serious crime - that's the bottom line.

And I just want to make one final point, though not related to this but related to the debate a Mr Bevan Lawrence today on the radio program 'AM' criticised me, I want to brand Mr Lawrence as a hypocrite and I do so because he campaigned under a banner along St Georges' Terrace in Western Australia against the Australia Card on the base is it was incursion into the privacy of Australians and is now arguing that peoples tax files should flutter from the Tax Office at the request of a Royal Commission or its Council even though it may not be for a serious offence. Now that sort of hypocrisy and humbug, I think, we can all do without.

J: Prime Minister, what do you think the priorities of the Royal Commission ...

PM: I remind you again of these factors, Peter, the Commission sat for 210 days, its issued 859 summonses, and 497 witnesses have been called, its now taken 31,000 pages of transcripts in its proceedings and 3,200 exhibits, it has 6 senior council and 15-18 legal staff and its cost to date \$16 million. You've got to ask the Western Australian Government what's its purpose was in establishing the Commission because there's one thing that's entirely clear, in terms of at least some serious offences committed in Western Australia or alleged serious offences, the appropriate

prosecuting agencies already had prosecutions in hand as Mr Hartnell amongst others makes clear.

J: Mr Keating, why was it justified even though the Fitzgerald ...

PM: Well, you'll notice in the minute which is at Number 1 that the Second Commissioner, Mr Nolan makes it clear that the amendments should be seen as a one-off relaxation of Section 16 because of the dividend in uncovering tax evasion, that is it does not establish a precedent for the disclosure of tax records. Now it turns out, I think, that the Tax Office was itself mounting prosecutions in this area independently of the work of this Commission and this Commission could have been seen to be helping in those prosecutions. In other words, there was a revenue dividend from it, but again that note which was written in 1987 made it quite clear that it does not seek to establish a precedent.

J: (inaudible)

PM: No but it's not convenience, the Tax Office has been given a charter by the Parliament to collect the revenue. I mean efficiency in the collection of revenue and costs and prosecutorial processes matter, it's part of the Commissioner's responsibilities to Parliament.

J: Prime Minister, \$500 million has disappeared from Rothwells ... it's a very serious investigation, it goes to the very top of the list in Australian Government and indeed the Tax Office tried to make it out as asking for people to flutter bits of paper out the Tax Office window.

PM: If they are seeking a fishing licence that is for a broad ambit capacity to seek tax information of Australians, then that does not go to specific individuals or particular cases.

J: You said for the purpose of the enquiry that it's the same criteria for the ...

PM: No that's what you say, that's what you claim. No not at all, that's not correct. It is as the Commissioner says, he cannot gainsay. In other words, once you provide this you can't say, oh look you can have this and not that. It's a case of you can have what you've asked for.

J: Do you regret the decision to grant Mr Fitzgerald a fishing licence?

PM: I think, in the out-turn of it all, no and I didn't regret it then, but we made amendments subsequently which have been appropriate and which have obviously worked and we have similarly denied, as we have the

West Australian Royal Commission, access to the Gyles Commission in NSW, but the agencies are there and the Police Units are attached to this Commission. Apparently the Commission doesn't wish to use the Police Unit.

J: Why didn't we know this yesterday?

PM: Why didn't you?

J: Yes.

PM: Because one doesn't know what's been said in the course of the day or what one should be responding to.

J: How do you respond to the request by the Premier of Western Australia to release information and the Deputy Speaker Ron Edwards?

PM: I reject them, I reject those requests for the same reason that the Commission has recommended now to a succession of Treasurers that they reject the request to the Commission generally.

J: (inaudible)

PM: There must be a vote of confidence by the Government in the secrecy provisions of the Tax Act. That Australians do have a right to privacy and that if Commissions which to pursue particular investigations with some specificity the avenues are available as a Commissioner of Research for those investigations to take place. But the notion that the tax office is going to be ripped open with a can opener, like a can with a can opener so that anybody can request information about any particular persons without the Commissioner having a discretion is, of course, not acceptable.

J: Couldn't the Commissioner use his discretion, couldn't he just make sure that it's not a complete fishing exercise, so that the Commissioner can ensure that it applies in terms of reference?

PM: The only way we believe that was possible, was an amendment to the Act in relation to the Fitzgerald Commission and that amendment was made, but as the Commissioner said in the terms of that amendment he didn't believe he could gain say his claim that the release, that he could then make judgements.

J: Couldn't he pass an amendment for this Commission to make it a little bit tighter than the Fitzgerald one so that the Commissioner could ensure that it was within the West Australians Terms of Reference?

PM: I think the fact is that the prosecuting agencies are established under legislation and one of those happens

to be the Western Australian Police Force and they are attached to the Commission.

- J: Mr Keating, do you agree with Mr Hartnell that the Royal Commission is simply getting in the way of the real issue?
- PM: I'm not in Mr Hartnell's position and that's a judgement he has made. Royal Commissions have produced findings of value but as to prosecutions I think that's a matter for judgement in Mr Hartnell's terms obviously.
- J: Mr Keating, ... the Commission has been prominent up until now in protecting these offences and individuals and that the reason for them seeking this wider power is because it has been incompetent up until now.
- PM: I don't think, if the implications of Mr Templeman's remarks are that after all this time and expense that he's trying to establish some apologia or foretelling the Commissions progress or its processes on the basis that a succession of Treasurers in the Commonwealth Government and the Tax Office have not allowed them tax information that in floating that notion, as I said yesterday, I think that is disingenuous.
- J: (inaudible)
- PM: Well that was a conclusion I drew yesterday.
- J: Costigan and Fitzgerald proved that you have to follow the money trail and following the money trail has people showing income and that's the whole point.
- PM: The powers this Commission has enjoyed, its terms of reference and those who've been brought before it are very, very extensive.
- J: Mr Keating, with the nature of this advice from the Tax Office ... was pressure put on the Tax Office in the Fitzgerald case which ... was commenting obviously fairly late in the piece on the proposal ... the next day by the Attorney-General looks as though it would be ... more reluctantly whereas the later advice is much more robust.
- PM: If you look at the minute it says, 'we retain our concern that the widespread availability of taxation information for non-tax purposes may lead to a reading down of our information gathering and access powers by the judiciary'.
- J: In other words, is it going along with government reluctantly for good reasons.
- PM: No, I think it recommended this advice, this is a note to me - I was then Treasurer, from Mr Nolan

J: (inaudible)

PM: The Tax Office has never been full bloodedly accepting of the notion that its resources should be available to all law enforcement agencies or Royal Commissions.

J: What about the case of Fitzgerald?

PM: No, because in Fitzgerald's case, I think, for the reasons they say in the minute, they saw sufficient reason to agree.

J: Surely, there is much more money available from potential tax evasion from this Commission than the Fitzgerald Commission, I mean that's more time compared to the West Australian Commission.

PM: Is that a qualitative judgement by you?

J: ... projection of revenue issues involved with WA shows (inaudible)

PM: There may well be, but I'm not aware of them.

J: Surely that's a very relevant piece of policy because that was a key turning point in criteria on which you made ...

PM: It was a turning point, but since then we've had those amendments. That's what I'm saying to you in Section 3(e).

J: 3(e) is useful if you are positive this is an investigative thing ... prosecuting agency, WA Royal Commission is not a prosecution ...

PM: No you don't. For a start it's got it's own investigative powers, its power to call witnesses and to question to them and they have been extensive have they not? And beyond that if they are focussing, where Mr Templeman talks about a number of players in Western Australia, surely they are not that extensive the numbers of players that they can't in specific terms ask the Australian Tax Office through their Police Unit for assistance and advice.

J: Does the saying about a stringent protections of the privacy imply to Royal Commissions set up by the Commonwealth Government as implied to ones set up under the States?

PM: I think it depends upon the letters patent and the terms.

J: Mr Keating, ... inaudible ... At what stage does it have to get before it can actually require from the Tax Office specific information, does it have to have a

specific charge in front of it? In other words from the Royal Commission?

- PM: No, it's got to be relating to an offence which is serious.
- J: How do you establish the offence?
- PM: It's described in the legislation it says and I'll find it "it can be punished by imprisonment of up to 12 months or more".
- J: My point is who establishes the offence, does the Royal Commission have to establish the offence before the enforcement agency can ask for Tax Office information?
- PM: It's a matter of the qualitative thing - whether it's serious or not.
- J: Well is an alleged offence, possible offence or whatever ...
- PM: Obviously where the consequences of the offence are serious and if they're not serious one would wonder why they would want information.
- J: What's the onus of proof, who establishes that it is a serious offence?
- PM: I think that would be fairly apparent, would it not, from both the police agency and the Deputy Commissioner of Taxation.
- J: Doesn't that extra ... situation apply. If the Commissioner suspects something but can't prove the ...
- PM: Yes, but this is on the notion that you think an offence is only visible within the information provided on the Australian Tax Office's computers. This Commission has been able to follow the transactions at their source legally and by inquisitorial process of witnesses.
- J: Mr Keating have you met Greg Symons?
- PM: I'm not here to discuss the Symons issue, Senator Richardson or any matters associated with it. I've got a report coming from Senator Richardson and Senator Sibraa and I'll deal with that when I receive it.
- That's it, have you got any more questions on the Commission?
- J: ... WA Inc inquiry may not be used to capacity. The minute says there is a friction between the Police Unit and others associated with the Commission as some have suggested, who suggested that?

- PM: Well I'm reasonably, reliably informed that there is some antipathy between the Police Unit and the other bureaucrats in the Commission.
- J: Mr Keating, I sorry I'm still not clear on the answer to Glenn's question. Can you give us some more information please on the question of how far the allegations go before it's able to ...
- PM: It has to be, I think, demonstrably an allegation that there is a demonstrable serious offence.
- J: There only has to be a reasonable allegation?
- PM: Absolutely.
- J: Mr Keating, how much damage will your refusal of Carmen Lawrence's approach today do her politically and to Labor?
- PM: Frankly, with all due respect to Premier Lawrence and anybody else, politicians asking plaintively by press release for broad access to the Tax Office and its resources are not to be taken seriously by the Commonwealth.
- J: Should her promise then to the West Australian people not to leave a stone unturned when the Commission began also hold as much weight as that then?
- PM: I think in terms of the serious underlying issues involved there, I think that that promise can be made good and it's important that it is.
- J: With this friction between the Police Unit and the Commission is stopping the Police Unit ...
- PM: Well that's part of your occupation, why don't you try and find out. These are the things which journalists should enquiry about.
- J: Mr Keating, are you entirely satisfied form of bankrupt.
- PM: I told you I'm not answering, Tom don't play silly games with me, I'm not answering questions on it. Have you got any further questions on the West Australian issue?
- J: Mr Keating the two reports on the Symons issue will they be publicly received?
- PM: Wait until I get the reports. Thank you

ends