Chapter Three

W.A. Inc.: Why Didn't We Hear The Alarm Bells?

Bevan Lawrence

People for Fair and Open Government (PFOG) was established in Western Australia in the winter of 1989 following the re–election of the ALP Government in February, 1989. We lobbied for a Royal Commission of Enquiry into what had then become known as WA Inc. This was a general reference to a number of financial arrangements which the Government had made with business which many in our community viewed as improper.

The lobby group came into existence because neither the press nor the Parliament had been able to uncover or stop any of these improper transactions. It believed that there had been a significant cover–up of these improper deals, including what became known as the Rothwells Petrochemical deal. PFOG was hopeful that if the Government was exposed, further public funds would not be wasted. It failed in that objective but ultimately, in November 1990, a Royal Commission of Enquiry was called by the then Premier of Western Australia, Dr Carmen Lawrence, into the major transactions.

This Commission of Enquiry was called when the ALP Government's voter support plunged to an all time low of 22 per cent, when the West Australian Ombudsman had called for a public enquiry following dramatic revelations in a court case, and when evidence was adduced through two Legislative Council parliamentary committees, and after The West Australian newspaper had finally campaigned for such an enquiry for about three weeks. The terms of reference were roughly in line with the terms of reference which PFOG delivered to the Premier in May, 1990.

The Royal Commission began with the support of the general community. While some criticisms and complaints were made during the enquiry, PFOG was generally supportive. Part I of its Report, which included all its findings of fact, was published on 20 October, 1992. The general community was supportive of its major findings, which appeared to be fairly based on the evidence. There was, no doubt, more to be uncovered but the public nature of the enquiry had exposed the essential features of the impropriety.

Part II was published three weeks after Part I. This Report was made pursuant to the terms of reference of the Royal Commission which required the Commission "to report whether changes in the law of the State or in administrative or decision making procedures are necessary or desirable in the public interest".

At the time Part II was published, a core group of those active within PFOG were both surprised at some of the recommendations and concerned that such recommendations did not fairly flow from the facts which had been uncovered by Part I. We felt that too little attention had been paid to the role of the Executive and that the Report had not in any way attempted to curb or control the power of the Premier and the Ministers either individually or collectively.

The Commissioners reported that "the allocation of ministerial responsibility both individually and collectively is for the Parliament to exact and for the electorate to judge, not for this Commission to pronounce upon". I strenuously disagree with this statement. Surely the very task of the Commission was to report whether changes in administrative or decision making procedures are necessary or desirable in the public interest.

If the Commissioners thought that such a task was outside their terms of reference, then we in the community surely now have a duty to undertake the task of ensuring that we bring the Executive under control so that it will in the future act lawfully and in the interests of the citizens of this State.
In determining how to prevent a recurrence of the abuse of power and the impropriety uncovered by the Royal Commission, I believe it is necessary to ask:
Why was it that information did not become public at the time to expose these deals?
Did the alarm bells ring? If they did, did anyone heed them?
What is required to ensure that such impropriety does not happen again?
Today, I will examine some of these transactions. I will refer to the public reaction at the time the deals were done, and then provide my own analysis of how this now disgraced Government managed to keep much of the impropriety quiet and in the process survived two elections. I will then use that analysis to make my own suggestions.

The Acquisition of Northern Mining

The Australian Labor Party led by Brian Burke won Government in Western Australia in February, 1983 after ten years in Opposition.
One of the platforms of its policy for the election was that the Government would acquire an interest in the fledgling diamond industry in Western Australia. At the time of the election the Argyle diamond venture was to be operated by a consortium of companies (joint venturers). Northern Mining NL had a 5 per cent interest in the project and was effectively controlled by Bond Corporation. The joint venturers were required, pursuant to an agreement with the previous Government, to build a town near the minesite. Shortly after the election the joint venturers made it clear to the Government that they wished to be relieved of this obligation, and they suggested that unless they were so relieved the project could be threatened.
Laurie Connell came to hear of this, probably through his employee, the late Jack Walsh, who was also a friend of Brian Burke. At about the same time Connell also became aware that Bond Corporation was anxious to sell Northern Mining NL, as it was having trouble servicing the debt which related to its acquisition.
L R Connell and Partners, acting as advisers to the Government, assisted the Government in obtaining an agreement from the joint venturers that in lieu of building the townsite $50 million would be paid over a period of time. At the same time, with L R Connell and Partners acting as its advisers, the Government agreed to acquire Northern Mining NL for $42 million.
After conducting its enquiries the Royal Commission found that L R Connell and Partners earned a commission of $5 million from Bond Corporation for the transaction. It found that Mr Burke was well aware that a fee was to be paid by Bond Corporation to L R Connell and Partners and, assisted by one of his political advisers, Burke kept this information from Cabinet, so that Cabinet was unaware that L R Connell and Partners was taking a commission from the vendor at the same time as it was advising the government as to the price it should pay. The Royal Commission found that the price paid was from $7 million to $12 million more than its true value.
It is apparent from Royal Commission evidence that the decision to acquire the company was deliberately kept secret from senior civil servants. The transaction was handled by Burke and his political advisers attached to the Department of Premier and Cabinet.
Cabinet was advised by Burke that no fee was being paid to Connell and Bond. The Attorney General, Mr Berinson apparently raised a query with Mr Dowding and then penned a hand written note to Burke which said:
"I was frankly stunned at the end of our meeting with CONNELL and WALSH to hear that their services to us (though not to others) were without charge. If I understand the position correctly,

that means that our primary advice came from agents (salesmen?) for the vendors. If I am wrong in this, I would be pleased. Even if I'm right the decision is made and looks right – and has the express support of our own adviser in the Under Treasurer."

Berinson did not send that note and wrote on the bottom of it:

"Not sent – but all matters discussed at P/H (Parliament House) 10.10.83. Connell is the organiser of Bond's loans."

Subsequently Berinson wrote a note to Burke on 27 October, 1983 which stated:

"Observations on the Acquisition

1. I have previously put to you that we were vulnerable to the charge that we failed to get fully independent professional advice. The Opposition has been weak on that, but the criticism will emerge should anything go astray.

2. We must have independent advice in the future and at a level of experience and expertise that is self-evidently adequate."

It is unfortunate that Berinson did not take any positive steps to bring his concerns to the attention of the Cabinet.

In addition to condemning Burke's role in the transaction, the Royal Commissioners criticised the Opposition parties in the following manner:

"The Northern Mining acquisition Bill came before the Legislative Council in a form which would deny accountability in respect of the actions of the Treasurer in the executive department. It is a pity that, notwithstanding that obvious feature, the Opposition, which could have used its numbers to reject the bill or amend it to preserve accountability, failed to do so."

I have since read the Parliamentary debates in their entirety. It is apparent that the Legislative Council was of the view that it should not oppose the Bill because it was attached to a Budget requisition and because it was part of the Government's pre–election platform. This was held to be in accordance with established Westminster convention.

Although many members of the Opposition spoke in opposition to the Bill both in the Legislative Assembly and in the Legislative Council, their comments were mainly directed to the desirability of the Government being involved in business and whether or not the Government paid a fair price.

Opposition members do not appear to have realised that, once acquired, Northern Mining NL could be used for a number of other activities in accordance with its Memorandum and Articles of Association and thereby avoid all parliamentary scrutiny of the company's future activities. Cabinet made the decision to acquire Northern Mining NL on 26 September, 1983. The Bill was passed through both houses of Parliament and became law on 31 October, 1983. It is apparent from Royal Commission evidence that some in Government well knew that once the Act was passed it could use the company for other purposes. This was not apparent to the Opposition at the time.

In my view, if any fault is to be attached to the Opposition or to the parliamentary processes, it relates more to the fact that the Bill could be rushed through Parliament in such a short period of time, and to an overly zealous adherence to the Westminster conventions referred to. The elements of this improper transaction, which recurred time and time again during the Burke administration, were:

1. Career public servants were kept in the dark;
2. The matter was closely associated with the Premier and his partisan advisers who were placed in key positions in government;
3. Cabinet was not fully informed; and
4. Neither the Attorney General nor any other member of Cabinet made sufficient enquiry about the arrangement they were approving.

After the WA Development Corporation was formed it acquired the shares in Northern Mining, which changed its name to West Australian Government Holdings Ltd with the object of it being an investment arm of the State. The State then had an investment arm which was not accountable to Parliament. This was first clearly brought to the community's attention by the Burt Commission of Accountability which reported to the Dowding Government in January, 1989.

The Fremantle Gas & Coke Sale to SECWA

Fremantle Gas & Coke Co Ltd was a public company which supplied gas through an underground reticulation system to the residents of Fremantle. It had been operating since 1883. On 19 September, 1986 the then Minister for Fuel and Energy, Mr David Parker announced that the Government had made a decision that SECWA would purchase the gas utility operations, which included the reticulation system (but excluded some land and buildings worth approximately $2.5 million), from Western Continental Limited, a company controlled by colourful entrepreneur Yossie Goldberg, for $39.75 million.

There was a public outcry, because Western Continental had purchased all the shares, which included the land and buildings, for $23.92 million in August 1985 after a take–over struggle involving Mr Robert Holmes a Court's company. Western Continental appeared to have made a profit of at least $15 million after outlaying just on $24 million twelve months previously.

Complaints about the deal received wide publicity. Both The West Australian and Mr Hassell, the Leader of the Opposition, appeared to be well informed. As a result of parliamentary questions and disclosures through The West Australian, some further facts and allegations rapidly emerged.

David Parker had in May, 1986 – just 4 months before the announcement of the deal – approved an increase in the share capital of the Fremantle Gas and Coke Company from $5 million to $15 million. (Note: Fremantle Gas and Coke Company had been controlled for many years by two Acts of Parliament which had the combined effect of limiting the authorised capital of the company and limiting the profits it was allowed to obtain or distribute to its shareholders.)

It was argued in the press that Mr Parker had increased the value of the company by increasing its authorised capital. This increase undoubtedly put Western Continental in a better bargaining position. It was also alleged that some discussions had taken place between the Government or SECWA to acquire the gas utility at the time Parker had agreed to increase the authorised capital. He denied all these allegations.

Although when he made the announcement of the purchase Mr Parker claimed it was "a Government decision", in fact he had made the decision alone with the knowledge of Premier Burke, and he had directed SECWA to make the purchase at the price agreed by him. It appeared that Burke was the only other member of the Executive to know of the deal. Mr Berinson, the Attorney General and Minister for Budget Management, told the Parliament that he knew nothing of the deal, nor did he know how it was to be financed. In fact Mr Parker had arranged, presumably through the Treasurer, Mr Burke, for $40 million to be loaned from Treasury funds to SECWA.

In the weeks ahead the Leader of the Opposition, Mr Hassell led the attack on Mr Parker and the Government, and his claim included claims that the Government had been involved in Goldberg's successful take–over of the Fremantle Gas and Coke Company in the previous year, and that an officer from SECWA had sent the former directors of Fremantle Gas and Coke Company to Mr Connell, who introduced them to Mr Goldberg.

Mr Hassell sought full details of Connell's role in the deal. He told the press that in the Lower House he would move for the Minister's resignation and in the Upper House the Liberals would ask for a Royal Commission of Enquiry. The former directors of the company also called for a full enquiry. Mr Parker denied any involvement in Goldberg's take–over of the company.

The matter was pursued by the Opposition and by The West Australian. The Government's response was to attack the former directors of the Gas and Coke Company and to claim that the furore was being whipped up for party political purposes. Burke told the public that the Liberals were envious of his relationship with the new breed of "four on the floor" entrepreneurs.

Connell made it clear both to the media and to his contacts in the Liberal Party that he was unhappy with being named in the Parliament, and he referred to "imputation and innuendo" surrounding his name and the deal.

On 29 October, 1986 about 15 members of the Parliamentary Liberal Party attended on Connell at his office. It is claimed that Connell attacked Hassell at that meeting, and some of those present gained the impression that the Liberal Party was unlikely to get financial support from the business community associated with Connell while Mr Hassell remained as Leader. Five weeks later, on 26 November, 1986 Bill Hassell was dumped as the Leader of the Parliamentary Liberal Party. At the time, Hassell said there was a link between Connell's meeting with his parliamentary colleagues and his being dumped as Leader.

On Hassell's departure the Opposition dropped its calls for an enquiry into the Gas and Coke deal and the transaction was rarely referred to in public for another four years.

It does not seem reasonable to blame the media generally, The West Australian or the Upper House for the failure to persist. It is possible that some in the Liberal parliamentary team avoided the issue in an attempt to maintain some relationship with the businessmen who were being courted by the ALP Government. Others were plainly close to Connell or to former Liberal Premier Ray O'Connor, who by then had worked with Connell. (At that time the Parliamentary Liberal Party would have been well aware that the ALP had dramatically outspent them in the February, 1986 election campaign).

The Royal Commission hearings began in a blaze of publicity in March, 1991. Shortly afterwards the public of Western Australia was astounded by the revelations which flowed from the investigators' discovery of Mr Burke's slush fund, euphemistically called "the Leader's Account". One of the accounts which formed part of the fund was blandly entitled "Advertising number 1 account".

During the hearings Connell gave evidence that he was entitled to 50 per cent of the profit made by Western Continental on the Gas and Coke deal. It was quickly established that on 7 June, 1985 – about four weeks before Goldberg won control of the gas company – Connell contributed $300,000 in cash to this Leader's Account. On 25 July, 1985 – two weeks after Mr Goldberg won control of the gas company – Burke's secretary, Mrs Brush received a further $300,000 from Connell. $200,000 was paid into the No. 1 advertising account and $100,000 was kept in cash in a calico bag in Burke's safe. The next day Goldberg's Western Continental reimbursed the $300,000 to Connell.

In conclusion the Royal Commissioners found inter alia:

a) In late January or in February, 1985 Mr Burke requested Mr Connell to consider intervening to defeat a take–over offer by J N Taylor for the Fremantle Gas Co. The Government did not want that bid to succeed. It was interested in finding an alternative purchaser from whom, at some time in the relatively near future, the Government would acquire the company or the gas utility. It was arranged that Mr Parker would contact Mr Connell. There was an understanding Mr Connell would profit from the arrangement.

b) Mr Parker contacted Mr Connell and asked him to arrange a counter offer. Mr Parker told him that the Government wanted to acquire the company or the gas utility in relatively short time if the counter offer succeeded.

c) Parker arranged a meeting at his office on 7 March, 1985 when Connell undertook to arrange a counter offer through Goldberg on the basis that, if successful, the company or the gas utility would be onsold to a Government agency.
d) At the meeting, Mr Kingsmill (a senior executive of SECWA) was requested by Mr Parker to send the directors of the Fremantle Gas Co., who were expected to call on Mr Kingsmill later that morning, to Mr Connell.
e) Mr Connell arranged a counter offer for the Fremantle Gas Co through Mr Goldberg. The counter offer succeeded. In May, 1986 Mr Parker agreed to a request from the Fremantle Gas Co to increase its authorised capital from $5 million to $15 million, knowing that it would enable the single shareholder to extract substantial profits from the company and knowing that it would increase the value of the company (and the gas utility) and benefit the shareholder and those associated with it, when there was an arrangement for the acquisition of the company (or the gas utility) by the Government or by a Government instrumentality and when he knew that Mr Goldberg was interested in a sale.
f) Without adequate knowledge and experience, and without proper advice from Treasury or from SECWA, Mr Parker entered into negotiations with Mr Connell and Mr Goldberg in private for the sale of the gas utility to SECWA. He gave SECWA no prior notification of the negotiations.
g) As a result of the negotiations, Mr Parker agreed on a purchase price for the gas utility, which was significantly higher than its true value.
The price of $39.75 million was in fact agreed in August, 1986 at an evening meeting in Mr Connell's house at which only Mr. Parker, Mr. Goldberg and Mr Connell were present.
It can be seen therefore that very few people knew about this improper deal, and had Parker been obliged to get Cabinet consensus to the arrangement properly things may indeed have been different.
I believe it is essential that, at the very least, a code of principles be put in place so that the public is aware of when a government decision is a Cabinet decision and when it is the Minister's sole decision. If a Minister is to direct a statutory authority to carry out a certain task, then at the very least he should be obliged to make that direction public forthwith. This deal had the same hallmarks as the first; no public service input and secrecy involving very few personnel. This time the matter was not put to Cabinet at all.

Rothwells Rescue and the Petrochemical Pretence

There was nothing planned about the Government's rescue of Rothwells Ltd in October,1987. Its decision was made with a great degree of urgency. However, it is of importance to note that the decision was made not by Cabinet – it being argued that the matter was too urgent and that there was no time to assemble Cabinet – but by three of the five members of the budget subcommittee. Burke, Parker and Berinson were present when the decision was made. Bryce was not consulted. Dowding had been present earlier but had agreed to abide by whatever decision was actually made.
It is not the province of this paper to unravel the extraordinary events that followed. It is sufficient to say that the original public rescue was for $300 million, half of which was guaranteed by the Government. This money was spent almost immediately and within nine weeks, by the end of December 1987, a further $340 million had been provided. Of this, in addition to the $150 million advanced by the National Bank and guaranteed by the Government, a further sum of $125 million was either advanced by the Government or its instrumentalities or was paid in as a result of government deals. This included $50 million paid in by Mr Holmes a Court's company on 16 November, 1987, which was a condition of the Government buying BHP

shares from him at a cost of $285 million. The SGIC had earlier purchased city properties from Holmes a Court at a cost of $206 million.
Between 1 January, 1988 and 25 April, 1988, when the Government and Bond Corporation each acquired 19.9 per cent of Mr Holmes a Court's interest in Bell Group, a further $135 million was invested in Rothwells from government sources or by government activity. $50 million was deposited by the Government Employees Superannuation Board and $50 million was paid in by Mr Warren Anderson's company after he and Mr Kerry Packer purchased what has become known as Westralia Square from government instrumentalities.
All of these transactions were carried out in secret. Neither the public nor the Parliament had any knowledge of this massive rescue. In fact, the public was deliberately put off the scent by the announcement on 22 April, 1988 that Rothwells had emerged from the rescue in good shape and had purchased Western Collieries Ltd for over $100 million. The public was not told that 100 per cent of the purchase price had been borrowed without any long term financing arrangement in place.
Once again Burke and Parker were the two Ministers involved in the rescue. They were aided and abetted by their two political advisers, Edwards and Lloyd. In March, 1988 Dowding replaced Burke as Premier. Berinson, who obviously had less information than the others, became involved when he was asked to introduce the Bell Group share deal into Cabinet.
Royal Commission evidence shows that Ministers were deceiving each other. Advisers were deceiving Ministers and vice versa. Cabinet was being knowingly and unknowingly deceived by the Ministers and the advisers, and the public was being deceived by all. Parliament was being told little.
On 29 April, 1988 it was announced that Bond Corporation and the SGIC had each purchased 19.9 per cent of the issued shares in Bell Group Ltd. The approximate cost to the SGIC was $150 million. The public was not told until later that the SGIC had also purchased convertible notes for $140 million. These notes were trading in Europe at a value of $95 million at the time. The value on the market of the shares purchased by the SGIC at the time of purchase was $95 million. This deal was driven by the need to inject further funds into Rothwells and to enable it to repay the $50 million deposited with it by the Government Employees Superannuation Board.
The Royal Commission found "that Mr Dowding and Mr Bond had reached an understanding that they would each purchase 19.9 per cent of Holmes a Court's shares in Bell Group and that the SGIC would remain as an investor so as to give effective control of Bell Group to Bond Corporation. Bond Corporation would then procure funds to assist Rothwells".
If the deal had succeeded, Bond Corporation would have outlaid $160 million to gain access to the cashed up Bell Resources Ltd, which then had liquid assets of $1.2 billion. No doubt Bond Corporation and the Government thought the liquidity problems with Rothwells were now solved. No doubt the officers in Bond Corporation were also well aware of its own liquidity problems.
The NCSC stepped in. Bond Corporation was obliged to bid (and pay) for all of the shares in Bell Group. In the end, $100 million was deposited in Rothwells by Bell Group, although there was evidence before the Commission that the original plan was to invest $200 million.
Following this disastrous Rothwells driven transaction, more funds were required and, just as importantly, Bond Corporation, because it had been obliged to pay for the remaining 60 per cent of the shares in Bell Group, required the return of the $100 million it had deposited in Rothwells.
The next rescue hatched up was the Petrochemical pretence. It is now a notorious fact that the Government and Bond jointly acquired the right to construct the Petrochemical plant from Connell's company and from Dempster (a Western Australian businessman) at a price of $400

million. Dempster was paid $50 million and Connell $350 million, which he was obliged to place in Rothwells.
In November, 1988 Rothwells collapsed. Despite this, Mr Dowding managed to keep the full story and the likely losses secret throughout the election campaign in January/February, 1989 and he won the election. He maintained, and obviously his story was accepted by some, that the Petrochemical deal was value for money, and that this had saved the Government from losing the original $150 million guaranteed by Burke to the National Bank. This money had been paid back by Rothwells at the time the Petrochemical deal occurred.
At the time of the election Mr Dowding maintained that government losses would be between $50 million and $100 million and arose out of direct government investment in Rothwells. In fact, the Government continued to prop up Rothwells until its collapse in November, 1988. In the end, the government instrumentalities themselves became severely embarrassed and could not inject further funds.
Ultimately, the SGIC lost almost all of the funds it invested in the Bell Group shares and the Bell Group convertible notes. Bond Corporation and the Government fell out. The Government lost all of the funds it had invested in the Petrochemical Project, which funds far exceeded the original purchase price. The SGIC is still burdened with poor investments in central city property which were an integral part of the rescue. The State of Western Australia has lost well over $1 billion.
The pattern of the Rothwells rescue and the Petrochemical pretence was similar to the previous deals. Only a few Ministers were fully involved, advice was not taken from civil servants, political advisers were carrying out the wishes of government, secrecy prevailed and the Cabinet, the Parliament and the people were deceived.
There was, however, one difference. Because of the dramatic and urgent need to keep pouring funds into Rothwells, many others in the community came to know of the secret rescue. Officers in the R & I Bank, the State Government Insurance Commission, the State Government Insurance Office, the Government Employee Superannuation Board and Treasury officials must have known that the Government was secretly supporting Rothwells. Outside Rothwells, officials in Bond Corporation, a large number of leading accountants, valuers and solicitors had varying degrees of knowledge. Mr Warren Anderson and Mr Kerry Packer knew that they could not complete a deal to buy properties in St George's Terrace without depositing $50 million in Rothwells. It is extraordinary that no significant whistle blower emerged during this period.
Press
Our leading newspaper, The West Australian cannot be criticised for its role in the Gas & Coke affair. It is, however, surprising that with the knowledge gleaned from this transaction and others, it completely failed the reasonable expectations of the people of Western Australia with respect to the Rothwells Petrochemical saga. All significant revelations in the press came either through Brian Frith writing for The Australian or Martin Saxon for the now defunct Daily News. It is impossible for the casual observer not to associate some connection between the ownership of the newspaper at the time and The West's failure to get a sniff of the massive public deception. In its defence, Chief of Staff, Paul Murray, has said the public "did not hear the thousands of questions which were parried, deflected or on many occasions answered with a direct lie. They did not read the many reports which were not published when editors decided they could not be defended in law because a strong factual base could not be established no matter how evident the wrong–doing".
While I have some sympathy for Mr Murray's position on the question of defamation laws, in my view, the impropriety was so obvious that a competent journalist properly resourced could have put paid to the Government in a very short period of time. It is now extraordinary to recall that

the 1989 election campaign was focused on an attack on Bill Hassell by The West Australian for claiming without supporting evidence that Bond Corporation had provided a six figure sum to the ALP.

I support Paul Murray in his call for reform of the defamation laws. I support the use of the public figure test which allows the publisher to successfully defend an incorrect story on the basis that it was written about a public official in good faith, without malice or reckless disregard for its truth or falsity.

On this matter, the Royal Commission in Part II of its Report concluded that "the present law may well have inhibited public investigation and a media discussion of at least some aspects of the events into which we have enquired, but given the national character of modern media practices, reform of this aspect of the law of defamation if it is to be effective requires a national approach".

With respect, I strongly disagree. Defamation laws are State laws and State responsibilities. In Western Australia, our law is already more beneficial to publishers than in some other States. There is no reason why we cannot take the lead in this regard.

My first article written on WA Inc proved in retrospect to be very tame indeed. It did, however, require 15 drafts before my honorary defamation solicitors would let me publish it. We believed we knew the truth, but we could not prove it and accordingly pulled our punches. On one occasion, I was obliged for my own financial protection to apologise publicly to Mr Holmes a Court for making a statement which turned out not only to be true but to be a gross understatement of the true position. It should not be forgotten that Mr Holmes a Court was probably the greatest beneficiary of the Government's improper business dealings. In all, Mr Holmes a Court or companies controlled by him received just on $780 million from selling assets to government instrumentalities.

Role of Cabinet and Cabinet Responsibility

As I mentioned in my introduction, the Royal Commission Report Part II ducked this issue. As I have shown in the transactions mentioned, Cabinet had a peripheral role in much of what occurred. When it did become involved it was not adequately informed. The lack of knowledge of Cabinet and its lack of participation is a matter which should be of great concern.

Whether the Royal Commission evidence was a correct assessment or not we will probably never know, but the notion that there is a Board of Directors known as the Cabinet taking control of the Executive of the State is a more comforting thought than the reality which has been uncovered. Surely we, the public, have a right to know:

a) When Cabinet has given due consideration to a matter and when it has not;

b) When a Minister has made a decision alone;

c) Which matters require a decision by the whole Cabinet and which matters can be delegated to a single Minister; and

d) In particular, the right of the Premier to make decisions on behalf of the Government without Cabinet approval should be clearly defined, and he should be obliged to tell the community when he is making decisions on behalf of the Government and when it is the decision of Cabinet.

When he was in Opposition, the present Minister for Health, Mr Peter Foss, introduced into the Upper House a Bill which purported to make public officials responsible for civil wrong and negligence in the same manner that applies to company directors. I believe this is a matter that should also be considered by the Commission on Government proposed by the Royal Commissioners.

The Royal Commissioners have, of course, dealt with a large number of other recommendations, many of which are to be referred to the proposed Commission on Government. It must not, however, be forgotten that the alarm bells did not ring effectively or, if they did ring, they were

neither heeded nor were acted upon. The primary reason for the success of the secrecy was that very few in the Executive were actively involved. Had the whole Cabinet been required to be involved, it seems impossible for the impropriety to have continued. The impropriety was not exposed in the public arena, and the defamation laws certainly played a significant part in this failure.

An examination of how the Executive should make its decisions and how its power should be shared, and a relaxation of the defamation laws, are essential matters which should be dealt with by the proposed Commission on Government. Their absence from Part II of the Royal Commission Report in my view seriously flaws that Report.

In my readings, I have uncovered no evidence which suggests that members of the Legislative Council were coy about doing their duty to the State because they felt they had been elected inappropriately. I do not accept the Royal Commissioners' findings in this regard. Reform of the Upper House may be a matter of great political interest but it should not be allowed to cloud the vital necessity that we reform and control the Executive.

In fact, in April 1989, when the Government attempted to rush the Petrochemical Authority Bill through Parliament, the Liberals opposed it and, with the last minute help of the Nationals led by Mr Eric Charlton, the Bill was rejected.

At the time, The West Australian attacked the Nationals and Charlton was made to look a fool. In fact, his innate common sense, without hard evidence, had led him to the conclusion that something was amiss. It certainly was. If passed, the Act would have had the effect of making lawful, guarantees to the Petrochemical deal which had already been given. Up until that time, the Government had denied giving the guarantees. The Parliament certainly did not understand that the guarantee provisions of the Bill would have enabled the Government to have perfected the otherwise defective guarantees, the legality of which was being disputed by bankers because they had not been approved by Parliament.

Whistle Blowing

At least with respect to the Rothwells issue, many career public servants came to know something of the Government's improper dealings, and had they not been bound by secrecy laws, and had there been someone in authority to complain to, I am sure many would have taken the appropriate step. They were left in a situation where, if they were to do their duty to the people of Western Australia and do what they considered to be right, they were obliged to break the law. One public servant who is known to me arrived at work in the middle of the cover–up to find the relevant Act open on his desk with the secrecy provisions highlighted. Such provisions are often used to protect those least worthy of protection.

In my view, the appropriate course of action is to pass legislation whereby public servants can go to an official like the Auditor General or the Ombudsman to make appropriate complaints. That Officer can then determine the appropriate course of action. Included in his options should be the ability to report the matter directly to Parliament. He or she alone should determine whether or not to make the complaint public.

Role of the Attorney General

The irony of the Bell Group share transaction was clearly shown when the National Companies Securities Commission, which was effectively controlled by the various State Attorneys–General, investigated the transaction involving the SGIC and Bond Corporation in the Bell Group share purchase. It was investigating an allegation that Bond and the SGIC had acted in concert. The transaction had in fact been introduced into the Cabinet room by one of those Attorneys–General. When Mr Berinson introduced this transaction, he appeared to erroneously believe that Kevin Edwards was holding a legal opinion given to the SGIC suggesting the transaction was lawful. In fact, the legal opinion merely suggested that the provisions of the

Companies Code did not apply to the SGIC. The Royal Commission concluded that had Mr Berinson been aware of the limited nature of the opinion, he and at least one other Cabinet member would have opposed the transaction.

This may be correct, but I am of the view that had Mr Berinson fully understood that he had a higher duty to ensure that at all times the Government and its instrumentalities acted legally, then he may have felt a duty to peruse the opinion or to seek further advice.

I believe it is essential that there be at least one member of the Executive or person attached to the Executive who has a responsibility to ensure that the Government acts lawfully and properly. In the United Kingdom, the Attorney General has historically been perceived as being more independent and less political than in Australia. The Attorney General has rarely been a member of Cabinet. In Australia and in other colonies, the position has been different, and the role has been politicised to such an extent that his or her obligation to the political party, the Cabinet and the Executive, and the duty to act as Counsel to the State and the Parliament, have become blurred and confused.

I believe it essential that we examine this role with a view to ensuring that the public is protected by knowing that at least one member of or person attached to the Executive is aware that he or she has a duty which far transcends any duty to the Party. In an article entitled "The Attorney General, Politics and the Public Interest"* the author said, "A more pertinent parallel might be that of the secretary of a large corporation, a lawyer, whose attendance at meetings of the Board of Directors is taken for granted and whose functions could well be described ..the better able he is to ensure that if there is a lawful and a proper way of achieving the corporation's objective, that way will be found". I would put it higher and require this official to ensure that in its deliberations and decision making the Government does not act unlawfully or with any impropriety.

The same author in an earlier article said "of no less significance than the Attorney General's traditional position as the State's chief agent in enforcing the criminal law is his responsibility as guardian of the public interest generally". In my view, during the Dowding/Burke administrations the Cabinet, including the Attorney General, failed to protect the public interest. I do not visit the totality of that failure on the Attorney General, but believe that the reasons for this and the rectification of the failure should be explored by the proposed Commission on Government. We must develop a system that delivers a watchdog that has the capacity to withstand political pressures savouring of party advantage.

Conclusion

I am concerned that so far few reforms have been implemented which would effectively prevent the abuse of executive power seen in the '80s from recurring. I believe that our adapted Westminster system visits enormous power upon the Premier and, in the federal sphere, upon the Prime Minister. I believe that the people of Australia should look carefully at curtailing not only the power of the Executive in each State, but also the power of the federal Executive and the Prime Minister. This power continues to grow largely unchecked.

Reference:

*JW Edwards, LLD (Cantab), 1984 : London, Sweet & Maxwell.