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INDEPENDENT
COMMISSION
AGAINST
CORRUPTION

REPORT ON INVESTIGATION INTO THE METHERELL RESIGNATION AND APPOINTMENT

JUNE 1992

END

Chapter 10

STATUTORY MATTERS AND CONCLUSION

The ICAC Act requires that Reports such as this must contain certain statements, and may contain certain recommendations. Those matters are dealt with in this chapter.

Section 78(2)

The Commission recommends that this Report be made public forthwith. The power to make such a recommendation is conferred by s78(2). The consequence, pursuant to s78(3), is that a Presiding Officer of a House of Parliament may make the Report public, whether or not that House is in session, and whether or not the Report has been laid before that House. If that course is followed, the Report attracts the same privileges and immunities as if it had been laid before that House.

I make this recommendation in the knowledge that the Presiding Officers will exercise their own judgment. It may be convenient for them to make the Report public in advance of the Parliament being recalled, as I understand it is to be, to debate its contents. I do think it important that the Report becomes available to all - participants, others in the political process, and the public generally - at the same time.

Section 74A(2)

There are five "affected" persons within the meaning of s74A(3). The preceding subsection requires that the Report must include, in respect of each such person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to prosecution for a specified criminal offence, the taking of action for a specified disciplinary offence, or the taking of action on specified grounds with a view to dismissing, dispensing with the services of or otherwise terminating the services of the person as a public official.

The statement the Commission makes in respect of each of Greiner, Moore, Humphry, Metherell and Hazzard is that in all of the circumstances consideration should not be given to prosecution for any criminal offence, or the taking of action for any disciplinary offence.

Notwithstanding the conclusion reached that the conduct of each of Greiner and Moore was corrupt conduct within the meaning of the ICAC Act, the Commission is not of the opinion that consideration should be given to the taking of action against either of them with a view to dismissal as Premier and Minister respectively. The reasons have already been stated. That action could only be taken, under the Constitution Act, by the Governor unilaterally or on the advice of the Executive Council. The former course is one which would be followed only in the most extreme circumstances, and the latter could arise but is unlikely to. The political reality is that this Report will be debated in the Parliament, and advice will be given to the Governor upon which he will act as a result of that Parliamentary discussion and any resolutions that may flow from it. It would not be a responsible exercise of the Commission's power for it to state that the Governor or the Executive Council should supervene. The supremacy of Parliament must be recognised.

In declining to make a statement that consideration should be given to dismissal, I am not to be taken as arguing for or against that course. The matter now passes to Parliament for its mature and responsible consideration.

The statement the Commission makes in relation to Humphry, Metherell and Hazzard is that it is not of the opinion that consideration should be given to the taking of action against any of them with a view to dismissal, dispensation of services or the termination of services as a public official.

The Death of Politics?

When addressing the Legislative Assembly in answer to the censure motion, on 28 April, the Premier said what follows. It is one extract taken from a long speech.

If what the Minister for the Environment did and what I did was corrupt, then in my judgment every political appointment that has ever been made in this State was corrupt. It will not be the case of the Leader of the Opposition or of a Leader in the Upper House reserving for themselves certain positions that they intend to use for political appointments. It will simply be against the law. If what we did was wrong then let every member on the other side of the House understand that the brand of New South Wales right-wing Labor politics which has been its stock-in-trade over the past 30 years will be not just immoral, but it will be seen as corrupt and it will be sanctioned with all the same feeling that has been expressed on this occasion. Ultimately, if what was done was against the law, then all honourable members need to understand that it is, for practical purposes, the death of politics in this State.

Once a political party is elected to office it will be against the law for it to make decisions which are in any way influenced by political considerations. There will be no question of Government paying particular attention, for example, to the needs of marginal seats; it will no longer be just a matter of politics - it will be against the law. What the Opposition and the media have opened up here is the very nature of politics itself - that is, the conflict between the demands of politics and the demands of public office. Under the English common law very serious obligations to act in the public interest are placed on those elected to public office, and yet our highest public officials are at the same time part of a political system which is about what is in many ways a largely private interest in terms of winning or holding a seat or holding office. This is a very difficult philosophical matter. In simple terms, the philosophy, which was once called disinterestedness, meant that once elected to Parliament members were obliged to ignore the interests of their constituents and act only in what they considered to be the national interest.

We here in Australia chose not to adopt that view of parliamentary office. When the labour movement gave us the party system last century a clear decision was taken to embrace politics and make it an integral part of our system. I am prepared to accept that community attitudes have changed, and that what is tolerated at one time is not acceptable at another. But every member needs to understand that the standards that are implied in this censure of me today are entirely new standards and are

> very strict standards. I am not sure, when honourable members have considered them calmly in the bright light of day, that those standards that are going to produce a workable system of democracy in our State, but they are standards that ought to be left to Mr Temby and the ICAC to adjudicate on before this House comes to make any serious judgments.

In due course of time it will be for the Parliament to decide whether the standard of conduct in public life required by this Report is unduly high. However I should make clear that the conclusion reached is based squarely on the fact that Metherell's appointment was to a public service position, there being a statutory requirement for appointment on the basis of merit.

Most of the other "jobs for the boys" examples given by Greiner in the course of his speech, and presented before me, were of a different type. As a matter of tradition, diplomatic and judicial appointments have been utilised by Governments as a form of patronage. Of course only the best should be appointed, but exceptions are not unknown. That is particularly true with diplomatic appointments of members of the party in power, whom it wishes to look after or sometimes get rid of, following a period of Parliamentary service. There is typically nothing very noble about such appointments, but the statement just made represents reality. Similarly with respect to appointments of Ministerial staff. There is no requirement, in law or practice, for such appointments to be made on a merit basis. Most political parties in this country have been involved in appointments of Ministerial staff using a mix of criteria including capacity, political connections, ideology, and perceived loyalty. Apart from the first, these criteria have nothing to do with public service appointments.

In conclusion, the Commission holds no stake in the outcome of the Parliamentary deliberations on this Report. The statutory duty has been performed, a full investigation conducted, and a conclusion reached and stated as to whether and whose conduct was corrupt within the meaning of the ICAC Act. It is now the responsibility of members of Parliament to decide how seriously they view the conduct in question. The Commission will turn its attention to the balance of the investigation, which has to do with laws, practices, and procedures, and possible changes thereto.

my finding that there was a lack of impartiality, that Metherell was favoured and that Greiner was a party to that favouritism.

It is not for me to express a view as to whether or not Greiner should be dismissed from his position. However I cannot say that the circumstances would not warrant that course being followed. In terms of s9 of the ICAC Act, he could be dismissed, on reasonable grounds.

As Greiner's conduct comes within s8(1), and could involve reasonable grounds for dismissal within the meaning of s9(1)(c), I find that his conduct was corrupt in terms of the ICAC Act.

Moore's Position

A good deal has been said already about Moore's involvement and knowledge. He did more, and knew more, than anybody else involved.

In contrast to Greiner, he viewed Metherell as being a man of integrity, as well as very capable. The concept of the fifth director's position with the EPA was in his mind before Metherell spoke to Hazzard.

It was clear to Moore that Metherell's resignation was from his viewpoint conditional upon him obtaining a senior public service position. Moore acknowledged that Metherell had seen his letter of 18 March to the Premier, and had suggested minor changes to the draft.

> *In other words Dr Metherell would get the position if he wanted it?---If Dr Metherell were an applicant I considered him to be eminently qualified and I did not believe that it would be fair to either Dr Metherell or any public servants who were put on a selection panel, that if Dr Metherell were to be an applicant and were to be appointed that some sort of charade process should be gone through because nobody would believe that it was done fairly and it would place an intolerable risk on the reputations of the public servants involved.*
>
> *And I take it that it follows does it not - - -?—Of course I do believe that Dr Metherell is eminently capable of being selected for that position on his merits if he were a non political application.*