



CRIMINAL JUSTICE
COMMISSION

**REPORT
ON AN INVESTIGATION INTO
POSSIBLE MISUSE OF
PARLIAMENTARY TRAVEL
ENTITLEMENTS BY MEMBERS
OF THE 1986-1989
QUEENSLAND LEGISLATIVE
ASSEMBLY**

DECEMBER 1991

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CRIMINAL JUSTICE COMMISSION
QUEENSLAND

Telephone: (07) 360 6060
Facsimile: (07) 360 6333

Your Ref.:
Our Ref.:
Contact Officer:

The Hon Wayne Goss MLA
Premier and Minister for Economics & Trade
Development & Minister for the Arts
Parliament House
George Street
BRISBANE Q 4000

The Hon Jim Fouras MLA
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE Q 4000

Mr Peter Beattie MLA
Chairman
Parliamentary Criminal Justice Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Sirs

In accordance with Section 2.18 of the Criminal Justice Act 1989, the Commission hereby furnishes to each of you its Report on an Investigation Into Possible Misuse Of Parliamentary Travel Entitlements By Members of the 1986 - 1989 Queensland Legislative Assembly.

Yours faithfully

SIR MAX BINGHAM QC
Chairman

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EXECUTIVE SUMMARY

This report concludes an investigation by the Criminal Justice Commission [the Commission] into possible misuse of Parliamentary travel entitlements by Members of the 1986-1989 Queensland Legislative Assembly. The possibility that such abuses may have occurred first came to the Commission's attention when, on 10 October 1990, journalist Peter Morley, wrote a report published in the Courier-Mail newspaper alleging that a former Auditor-General of Queensland, V C Doyle,¹ had raised the matter with the Premier of Queensland, M J Ahern, on 20 October 1988. The report proved to be accurate.

Once information concerning alleged misconduct or, as here, official misconduct, comes to the notice of the Commission, that information must, by Section 2.27(2) of the Criminal Justice Act 1989 [the Act], be furnished to the Complaints Section of the Official Misconduct Division. By Section 2.28(1) of the Act, any person may furnish information concerning official misconduct to the Complaints Section.

After information is furnished to the Complaints Section it must, under Section 2.29 of the Act, be assessed. In the present case, the information having come to the Commission's notice, it was bound to conduct an investigation.

The investigation has now taken just over one year to complete. Whilst the Commission regrets the length of time taken to finalise the matter, it makes no apology for this. Delays were occasioned by a number of factors. As the report reveals, a great deal of documentary evidence needed to be obtained from the Clerk of the Parliament's Office and which then had to be sifted and considered. Further substantial delays were occasioned by the refusal of some Members² to voluntarily provide answers to the Commission's inquiry. In the majority of cases the Commission was required to use its powers under the Act to obtain information from Members.

¹ In the interests of economy and consistency, surnames are used without the customary "Mr" or equivalents and generally honorifics will be used only once. No discourtesy is intended.

² Throughout the report the term "Members" has been used to include both present and former Members of the Legislative Assembly of Queensland, who were Members during the period December 1986 to December 1989.

The Process

It is fair to say that the investigation was amongst the most sensitive conducted by the Commission. It proceeded despite allegations of interference with, and of attempted intimidation of, the Commission, and was the subject of intense media speculation. That speculation at times involved much guesswork and the use of incomplete material, unfortunately made public from sources outside the Commission in an effort to determine which Members were the subject of the Commission's inquiry. This was, at the very least, unhelpful.

None of this was permitted to have any effect on the conduct of the investigation.

The Commission concedes that the investigation was a difficult matter for all concerned and the assistance rendered by the Office of the Speaker of the Parliament and by the Government is acknowledged. The Parliamentary Criminal Justice Committee has been a model of propriety.

In order to properly investigate the allegations in a way that excluded any possible political considerations, all claims by Members for daily travelling allowance during the term of the 1986–1989 Parliament were considered. A screening process was adopted which led to a number of journeys being closely examined by the Commission. This process involved the use of the following criteria:

- Travel during holiday periods;
- Possible tourist destinations;
- Cost;
- Duration; and
- Repetition.

The Commission accepts that some doubtful claims may have eluded this net but this consideration was outweighed by the need to adopt some objective criteria to select matters for closer investigation. Additionally, at significant points in the investigation, the assistance of Senior Counsel independent of the Commission was sought to ensure consistency and objectivity in the midst of competing interests. For further details, see below under "Prosecutions" (Page vi).

The Evidence

As this report reveals, there is cogent evidence suggesting that the Parliamentary Travel Entitlements Scheme was abused by a significant number of the Members of the 1986–1989 Queensland Legislative Assembly. The evidence raises a strong suspicion that those Members used daily travelling allowances, in combination with other entitlements, to fund private excursions, on some occasions alone, but generally with their spouses, and often with family members.

Despite assertions from Members that their travel was in respect of Parliamentary business, as required by the relevant guidelines, there was in some cases little documentary evidence to support such statements.

It is important to record that the Commission's investigation revealed that some Members of Parliament were scrupulous in the use of public funds and given their stand against the prevailing culture, their moral fibre in upholding probity in public office should be publicly commended. Alas they were all too few.

The opportunity for Members to misuse entitlements was enhanced by the poor system of accountability in place at the relevant time. The travel entitlements system has undergone some alterations as a reaction to the Auditor-General's revelations, publicity given to them in the Courier-Mail, and the Commission's investigation.

However improvements can still be made. Accordingly there are a number of recommendations contained in this report which attempt to strengthen the system of accountability whilst at the same time allowing Members to travel on Parliamentary business. The Commission recognises that such travel can, if properly undertaken, be of substantial benefit to the Member and to Parliament.

Recommendations

In recommending changes to the entitlements system the Commission has sought to:

- Have clearly defined the type of journey which could be regarded as being conducted on Parliamentary business;
- Require a greater degree of reporting by Members as to the nature of the Parliamentary business conducted on their travel;
- Reduce the likelihood that Members will wish to or be able to use allowances for holidays; and
- Encourage the efficient use of allowances.

In summary, the Commission recommends that:

- An Accountable Officer of suitable seniority and experience assume the responsibilities now allocated to the Clerk of the Parliament in respect of the accounts of the Legislative Assembly, Parliamentary Service Commission and the Parliamentary Service;
- The Members' Entitlements Booklet be fully reviewed and redrafted to take into account:
 - the recommendations of this Commission; and
 - any recommendations resulting from the report by the Electoral and Administrative Review Commission on a review of information and resource needs of non-government Members of the Queensland Legislative Assembly;
- The Members' Entitlements Booklet be renamed "Members' Salaries, Allowances and Services Code" and that the Parliamentary Service Commission, the Accountable Officer, the Auditor-General and the Premier's Department be consulted with respect to its review and amendment;
- The "Travel for Members and Spouses" entitlement be abolished;
- A new section be included providing for Members' travel when claiming Daily Travel Allowance;
- Conditions for payment of Daily Travelling Allowance be tightened, including the limitation of the allowance to a total of 28 days per year per Member non-cumulative; a requirement for prior confirmation in respect of claims for greater than five days duration, detailing of the nature and relevance of the journey and of the associated Parliamentary business; and a requirement for more complete documentation, certification, and proof of claims;
- "Parliamentary business" be comprehensively defined based upon the recommendations contained in this report;
- The Accountable Officer be required to certify that he or she is satisfied that claims are properly made as being for travel in respect of Parliamentary business;

- The publication entitled "Members' Salaries, Allowances and Services Code" and subsequent amendments thereto be published in the Government Gazette and a comprehensive schedule of all journeys by Members for which daily travel allowance was claimed be tabled in Parliament annually; and
- Members be instructed as to their responsibilities by the Accountable Officer.

At the end of the day, no system can prevent deliberate fraud. If a Member wishes to invent a fiction then he or she will most probably be paid the allowance. However the Member will do so in the knowledge that he or she will be leaving behind a record which can be scrutinised and if proved false prosecution action may follow. In the present investigation such action was not available largely due to the lack of such accountability and the consequent absence of records which could provide the necessary evidence.

The Role of Public Officers

In this report the Commission is critical to some extent of the conduct of both the Accountable Officer of the day (the Clerk of the Parliament), and the Auditor-General of the day.

Under the Financial Administration and Audit Act (1977) [FA&A Act], the Clerk of the Parliament, as Accountable Officer, must ensure that expenditure is for a lawful purpose and be made in compliance with the prescribed requirements. In the Commission's view, the Clerk of the Parliament, A R Woodward, did not discharge this duty. There was no system of accountability insofar as claims for daily travelling allowance and other travel entitlements were concerned. The system in place was that if the Member certified that he had been conducting Parliamentary business whilst travelling then his word was accepted. No evidence of any kind was required when submitting a claim for daily travelling allowance.

In his defence, the Commission recognises that Woodward was in a very difficult position. The guidelines which regulated the payment of daily travelling allowance were grossly inadequate. There was no definition of the term "Parliamentary business" prior to March 1989. This enabled Members to form their own extremely wide view of the meaning of that term. In addition, Woodward was placed in the unenviable position of being on the one hand, the person who, as servant of the House, provided expert opinion to Members on procedures, whilst on the other, the person to whom Members were accountable. It is always difficult to wear two hats and it is little wonder that Woodward felt impotent in such a situation.

In a similar way the Commission recognises that the Auditor-General, V C Doyle, made a genuine effort to have his concerns addressed by seeking an audience with the Premier on this and other issues. He too considered that there was little that the Clerk of the Parliament could do about the matter, and, since he thought he had more authority, took it upon himself to take the matter forward. Whilst he is to be commended for such action, the Commission does not approve of his decision to give a clean bill of health to the accounts of the Legislative Assembly Offices, or his failure to bring the matter to the attention of the Accountable Officer until the matter had entered the public arena. The Commission notes his arguments to the contrary, in particular that this matter in his view raised no concern about the administration of the travel entitlements system and that it did not affect the truth and fairness of the financial statements. In the Commission's view, these arguments do not provide sufficient justification for the course he chose.

Prosecutions

The Commission has given careful consideration to the question of whether or not prosecution proceedings should be recommended against any Member of the 1986–1989 Queensland Legislative Assembly in respect of the matters canvassed by this report.

It is the Commission's view that there are substantial evidentiary hurdles which make prosecution action unavailable in the vast majority of cases, and tenuous, unsatisfactory and unfair in the remainder. The reasons are many but primarily relate to the poor guidelines in place at the relevant time together with the absence of any requirement for Members to report on the Parliamentary business undertaken by them during their travel. This latter consideration meant that there was very little information available to the Commission which could be investigated. Information that could be obtained was largely supplied by Members.

The majority of Members chose not to provide information until served with a Notice to Produce Documents requiring the information to be furnished. Even then there was very little evidence, apart from assertions by Members, that Parliamentary business was conducted by them during their travel. Nearly all Members explained that the absence of documentation was due to the unstructured nature of their journeys or the fact that they were no longer in Opposition or in Government, as the case may have been, and consequently destroyed what documentation they had in their possession.

Further information was sought from some fifteen Members at private investigative hearings, those Members being chosen on the basis of the criteria detailed in the report. Almost half of those Members when called objected, pursuant to Section 3.24 of the Act, to making disclosures to the Commission on the ground that such disclosures may tend to incriminate. Having taken the objection their evidence was not available for use against them in any criminal proceedings (other than in respect of a contempt of the Commission or an offence of perjury).

To test its view as to the non-availability of prosecution action the Commission prepared sample briefs which were referred to the Director of Prosecutions pursuant to Section 2.24 of the Act.

In respect of those sample briefs the Director advised that either prosecution proceedings would not lie or that further evidence would need to be obtained.

The Commission determined that further inquiries were unlikely to be productive, and would present such a misleading and unsatisfactory picture of the extent of the practices disclosed by this report that it would be unfair for it to pursue the matter further. In any event, the Members would have been identified through those further inquiries and publicly pilloried with almost no ultimate prospect of successful prosecution, again an unfair situation.

Consequently there will be no criminal prosecutions arising from this investigation.

To Name or Not to Name

It will be observed that in this report Members whose claims have been investigated have not been named and that the evidence and other material considered by the Commission has been referred to in anonymous terms. Some may say that in drafting the report in this way, the Commission has given politicians favoured or partial treatment. Some may say that where the investigation has revealed abuse of this system, those who have been responsible for that abuse should be exposed and held to account. Some may say that in criticising the conduct of certain named officials, such as the Clerk of the Parliament and the Auditor-General, while refraining from identifying Members of Parliament whose conduct is also criticised, the Commission has shown undue solicitude for politicians.

These arguments are misconceived. One purpose of this investigation was to establish whether any Member had been guilty of official misconduct. That involved a consideration of possible criminal liability, that is whether any Member had acted dishonestly in applying public funds to his or her own use. Certainly there is evidence in some cases that some Members may have been dishonest and such evidence may justify a finding to that effect on the balance of probabilities.

However, as earlier indicated, it is not proposed to recommend that any Member be prosecuted.

In a significant number of cases, the investigation has revealed much to be suspicious about, but in no case is the evidence in its present state capable of establishing dishonesty beyond reasonable doubt. In these circumstances, to name Members whose conduct is suspicious but no more, would be to convict them of what amounts to the criminal offence of misappropriation without according them the protection of a criminal trial. The High Court of Australia unanimously held in the case of Balog -v- Independent Commission Against Corruption (1990) 169 C.L.R. 625, that the Independent Commission Against Corruption in New South Wales was not entitled in a report pursuant to Section 74 of the Independent Commission Against Corruption Act 1988 to include a statement of any finding by it that any person was or may have been guilty of a criminal offence or corrupt conduct.

Similar considerations apply to public reports of this Commission by virtue of the provisions of the Act.

On the other hand naming the Auditor-General, the Clerk of the Parliament, or other officers of Parliament, is quite a different matter. Although some of the things they did or omitted to do are the subject of adverse comment in the report, it is not suggested that their conduct involved dishonesty or any criminal offence. Naming them in a context unrelated to any possible criminal liability involves no discriminatory treatment when compared with the treatment of politicians.

The Commission is conscious that there will be those who point to its previous investigative reports where persons the subject of inquiry were named and ask why this did not occur in this instance. The answer to this question lies in a closer examination of the status or findings of those reports.

In all but one case, the Commission made no adverse findings in respect of the primary issue, and in the exceptional case the report went forward in an anonymous form. Thus it is apparent that the position adopted by the Commission in this case is not inconsistent with its previous approach.

To conclude, the Commission is reminded of the comments of Commissioner Fitzgerald QC in the section of his report at page 8 headed "Guilt and Innocence". There it is said:

"Where misconduct is institutionalised, guilt and innocence are not a matter of black and white. There are infinite shades of grey. Some people have been merely incompetent, or the victims of inertia (whether through disinterest or self-interest). People have been involved in misconduct of varying degrees. The shadows fall differently depending on one's point of view, and in some cases, the memories of those who wish to settle scores or recontest old battles.

.....

However, the most important thing about evidence, and the purpose of the summary of it contained in this report, is not the truth or falsity of particular allegations, but the pattern, nature and scope of the misconduct which has occurred.

The main object of this report and its recommendations is to bring about improved structures and systems. The past misdeeds of individuals are of less concern, except as a basis for learning for the future."

The Commission came to similar conclusions in this investigation.

1. GENESIS OF THE INQUIRY

On 10 October 1990 the Courier-Mail newspaper published a report entitled "Auditor reveals misuse of funds" and "MP's in holiday scandal"³. The article began:

"Queensland politicians misused travel and other entitlements to take private holidays that cost taxpayers nearly \$500,000 in 1987-88.

The MP's - including serving Labor Members reportedly in senior positions - took holidays over the Christmas-New Year period under the guise of doing 'parliamentary business'.

Although holiday travel was expressly forbidden under the guidelines at the time, the politicians tripped around Australia and New Zealand at taxpayers' expense."

The information on which the article was based was allegedly taken from an aide memoire prepared by the former Auditor-General of Queensland, V. C. Doyle, for a meeting with the then Premier of Queensland on 20 October 1988. In quoting the aide memoire the Courier-Mail wrote:

"The two (Members' entitlements) schemes are used in combination to fund travel which, by virtue of destinations, timing and nature, appears in many cases to be vocational and is devoid of any evidence of relationship with Members' official responsibilities."

Following publication of the article the Commission obtained a copy of the aide memoire⁴ and confirmed that the information contained in the Courier-Mail article was accurate.

After referring in the aide memoire to a number of examples of claims made by Members of the Legislative Assembly, Doyle commented in Section 3(c) as follows:

"The above are selected examples of many payments considered to strongly suggest that

³ Annexure 1

⁴ Annexure 2

- *the 'Daily Travelling Allowance scheme' is being misused in that payments are claimed and made in circumstances where 'Parliamentary business' is not the purpose of the travel; and*
- *the 'Travel for Members' scheme' is being utilized in conjunction with the Daily Travelling Allowance scheme, to finance major components of family holiday trips."*

In Section 4 of his aide memoire Doyle commented on the audit position in the following terms:

- "(a) It is not possible to determine or estimate how much of the above expenditures was incurred on travel unrelated to Parliamentary business. However, there is little documentary evidence that any of it had an official purpose and strong circumstantial evidence that a very large proportion of it did not.*
- (b) The intent and purpose of the schemes should be clarified and the guidelines amended to remove all ambiguity and doubt as to the purposes of the schemes and provide for appropriate approval procedures."*

The guidelines which existed at the time provided that Daily Travelling Allowance was available only for travel on Parliamentary business outside the Member's electorate and within Australia, New Zealand, and Papua New Guinea.

In view of Doyle's opinion, the Commission concluded that there was a suspicion that Members may have committed a criminal offence and/or an offence of official misconduct by claiming Daily Travelling Allowance and travel entitlements in respect of travel, the purpose of which was unconnected with Parliamentary business. Furthermore, in view of Doyle's opinion that the guidelines needed to be clarified, the Commission considered that this may be a case in which recommendations could be made by it to prevent possible abuse of the travel entitlements scheme in the future.

2. JURISDICTION OF THE CRIMINAL JUSTICE COMMISSION

The Criminal Justice Act 1989 [the Act] empowers the Criminal Justice Commission to investigate all cases of alleged or suspected official misconduct by persons holding appointments in units of public administration that come to its notice from any source. [cf: Section 2.20(2)(e)(ii)]. Section 2.23(1) of the Act defines the general nature of official misconduct and provides, inter alia, that official misconduct is:

- "(b) Conduct of a person while he holds or held an appointment in a unit of public administration -*
- (ii) that constitutes or involves a breach of the trust placed in him by reason of his holding the appointment in a unit of public administration;"*

Furthermore, such conduct is not official misconduct unless it constitutes a criminal offence or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration.

The term "unit of public administration" is defined under Section 1.4(1) to include the Legislative Assembly, and the Parliamentary Service.

For the purposes of determining jurisdiction to conduct an investigation, the Criminal Justice Commission found that Members of the Legislative Assembly were holders of appointments in a unit of public administration, and further that the suspected misconduct may have constituted a breach of trust placed in the Member by reason of holding the appointment which could constitute a criminal offence or a disciplinary breach that provided reasonable grounds for termination of the Member's services. Accordingly the Commission considered that it had jurisdiction to investigate the possible misuse of Parliamentary travel entitlements.

In addition the Act provides that the Commission is to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct. [cf: Section 2.20(2)(f)]. In view of Doyle's opinion that the guidelines in respect of Parliamentary travel entitlements required amendment the Commission also considered that it had a duty to consider the guidelines with a view to offering advice which may concern the detection and prevention of official misconduct.

3. **DECISION TO INVESTIGATE**

Having concluded that the suspected misconduct may, if proved, constitute official misconduct by members of a unit of public administration, the Commission decided that an investigation into the matter was warranted. Whilst Doyle's review, as outlined in the aide memoire, merely concerned the financial year 1 July 1987 to 30 June 1988, the Commission considered that as this period was but a portion of the Parliamentary term it was justified in considering all claims made during the term of the 1986 Parliament.

4. LOGISTICS OF INVESTIGATION

During the term of the 1986 Parliament, a sum of just over \$3,000,000 was spent on travel for Members. Of this amount, claims were made for daily travelling allowance in respect of 1,535 trips amounting to expenditure of \$534,716.

The Commission obtained the relevant documentation and entered all transactions in respect of travel, approximately 11,000, onto a database specifically designed for that purpose. A team of data entry personnel loaded this material over four weeks enabling reports of transactions to be produced.

The reports were then considered after which the Commission decided to seek information concerning the Parliamentary business conducted by 54 Members, from all three major Parties, on 225 journeys, for which \$186,278 was claimed in respect of daily travelling allowance.

Of the 54 Members who were asked to provide information, 37 refused to do so and were therefore served with a Notice To Discover Information under Section 3.1 of the Act. The Notice compulsorily required production of the information particularised therein. Failure to produce the information would constitute a breach of the Act in the absence of lawful excuse (cf: Section 6.9).

After consideration of the information provided by all Members, 15 were called at investigative hearings held over 6 days, in camera, before the Chairman, Sir Max Bingham QC. R O'Regan QC appeared to assist at these hearings, whilst F H Smith, Legal Adviser with the Commission, appeared as his junior. O'Regan was also consulted on a regular basis during the course of the Commission's investigation.

At the conclusion of the hearings a discussion was held with the Director of Prosecutions, R Miller QC, concerning criminal prosecution of several Members. Later, sample briefs of evidence in respect of a number of Members, were forwarded to him for his consideration.

In addition to consideration of the claims made by Members, the Commission examined the guidelines in place concerning Members' entitlements and the method by which expenditure was approved by the Accountable Officer, who is the Clerk of the Parliament, and his staff. In this latter regard, the Clerk of the Parliament at the relevant time, Alan Robert Woodward; his Senior Executive Officer (Administrative Services), Robert Edwin Fick; and the Parliamentary Travel Officer, Edward Stevens Newton, were called at investigative hearings.

Barry Fred Richardson, Executive Officer, Government and Executive Service Branch, Premier's Department, also gave evidence at an investigative hearing in respect of the process by which guidelines were drafted and amended.

The Premier's Department files concerning the guidelines were obtained for the period 1979 to 1989.

The former Auditor-General, Doyle, who was responsible for the aide memoire was called to give evidence concerning the steps adopted by him following these matters being brought to his attention by his Authorised Auditor.

F H Smith assisted at those in camera hearings at which witnesses who were not Members of the 1986 Parliament were called.

In all, 238 exhibits were tendered at investigative hearings.

During the course of the investigation the Commission applied to the Supreme Court for approval to serve a Notice to Produce Documents on the present Auditor-General, P B Nolan. Approval was given by the Court and consequently all documents relevant to annual audits of the Legislative Assembly were obtained for the period 1986 to 1989.

Finally, in order to examine Members' entitlements systems in other jurisdictions, the Commission wrote to Auditors-General in all other Australian States, the Commonwealth of Australia, New Zealand and Canada, requesting information on the systems in operation in those places. These systems were considered by the Commission when formulating its recommendations.

5. **RESPONSE TO THE COMMISSION'S REQUESTS FOR DOCUMENTS AND ASSISTANCE**

(a) **The Speaker of the House**

(i) **Documents**

By letter dated 23 November 1990 the Commission wrote to the Honourable J Fouras MLA, Speaker of the Legislative Assembly of Queensland and, after advising that the Commission had decided to commence an investigation into the published material concerning alleged misuse of travel expenses by Members of the Legislative Assembly, requested all original documents and records relating to payments to Members for daily travelling allowance and travel expenses.⁵ These were to include:

- payment vouchers, claims and supporting documentation such as dockets and invoices;
- records pertaining to daily travelling allowance usage by Members; and
- all other relevant material.

By letter dated 4 December 1990 the Honourable the Speaker advised that he had authorised the Clerk of the Parliament, who had possession of the documents, to compile all relevant material, together with payment vouchers, claims, and supporting documentation and records relevant to daily travelling allowance usage by Members.⁶

By letter dated 14 January 1991 the Commission sought the Speaker's advice as to when the documents might become available.⁷ The Speaker replied by letter dated 17 January 1991, advising that the material was being collated.⁸ He pointed out that the Commission had not specified a time by which to supply the documents. In addition, he sought, for the first time, clarification of the term "all other relevant material".

⁵ Annexure 3

⁶ Annexure 4

⁷ Annexure 5

⁸ Annexure 6

A reply to the Speaker's latest letter was forwarded by the Commission on 23 January 1991⁹ in which the Commission advised that the classes of documents sought, in addition to claims, receipts and other primary documents, might be:

- any guidelines, advices or correspondence in the relevant period, pertaining to the entitlement of Members to travel expenses; and
- any correspondence with Members concerning their entitlements, including any cases where claims may have been amended or refused.

At about this time the Commission was given a memorandum under the hand of the Honourable the Speaker dated 17 January 1991 (the same day as the Speaker's letter to the Commission).¹⁰ The Commission was told that the memorandum was distributed to Members of the 1986-1989 Queensland Legislative Assembly, some of whom were sitting Members.

In that memorandum the Speaker advised that the Commission had decided to commence an investigation into the matters raised by Doyle in his aide memoire. He went on to state:

"There does not appear to be any Statutory provision which would render records of Members' travelling allowances and travel expenses any more immune from production under legal compulsion than those of any Government department. The Crown Solicitor further advised that as to the question of Parliamentary Privilege he did not consider such things as vouchers, cancelled cheques, airline booking records, and accounting records generally could be a subject of a valid claim of Parliamentary Privilege.

As a result of this advice I had no alternative but to comply with the request of the Chairman of the Criminal Justice Commission. In endeavouring to do so I note that during the period in question you made certain claims on the Legislative Assembly in respect of one or more of the abovementioned categories of expenses.

I am enclosing for your personal information a copy of the relevant documentation held by the Legislative Assembly in relation to those claims. I trust that this will assist you should you be contacted by the CJC."

⁹ Annexure 7

¹⁰ Annexure 8

The Commission is extremely disappointed that despite the gravity of the matter and the decision to investigate being communicated to the Speaker under cover of a letter marked "private and confidential", he chose to alert the Members and former Members in this fashion.

To make matters worse, the documents provided by the Speaker to Members and former Members included, in some cases, details of travel expenses for several others which happened to be listed on the same statement of account.¹¹ Subsequently when, as was inevitable, details of travel and of the investigation became known to the media, Members accused the Commission, quite wrongly, of leaking those details to the press. As a consequence, many Members expressed a reluctance to co-operate with the Commission's inquiries for fear that any information provided by them would find its way into media reports.

The documents sought from the Speaker were finally made available for collection on 6 February 1991, over two months after the Commission made its first request for them. In the absence of these documents no investigation of the claims could commence; as soon as they were received processing began.

(ii) Guidelines

It was obvious from Doyle's aide memoire that the Commission needed to gain an understanding of the guidelines which regulated the payment of Parliamentary travel entitlements. Without that understanding it would have been impossible to make any reasonable assessment of whether the claims for and payment of travel entitlements were legitimately made.

As will become clear in this report the guidelines were by no means straightforward and were deficient in many respects. By letter dated 20 February 1991 the Commission turned to the Speaker of the House for his assistance in gaining the necessary understanding of the guidelines.¹² In particular the following issues were canvassed:

- whether the definition of "Parliamentary business" as first defined in a March 1989 guideline differed in any respect from the prior accepted meaning of that term;
- whether the daily travel allowance was legitimately payable for Members' personal or holiday travel;

¹¹ Annexure 9 - Hansard 19 February 1991

¹² Annexure 10

- whether a Member's entitlement to air travel was restricted to travel involving "Parliamentary business", and whether it was payable for holiday or personal travel; and
- whether restrictions on travel contained in the section entitled "Notes" were applicable to the "Travel for Members and Spouses" section of the guidelines.

The Honourable the Speaker replied by letter dated 26 February 1991, but that reply merely contained repetition of the various sections of the guidelines.¹³

Finally, by letter dated 21 February 1991 the Commission again sought the Speaker's assistance, this time to obtain diaries of Members of the 1986-1989 Legislative Assembly who were also Members of the current Parliament.¹⁴

The Speaker, in his letter of 22 February 1991, whilst stating that he did not wish to impede the progress of the Commission's inquiry, refused to assist, arguing that the diaries were the personal property of the Members and as such he had no control over them.¹⁵

(b) The Auditor-General

By letter dated 19 July 1991 the Commission advised the Auditor-General of Queensland, Nolan, that it was investigating the matters raised by his predecessor, Doyle, and sought reports prepared by the Department's authorised auditors, along with any other relevant documentation, in respect of the audit of the books and accounts of the Legislative Assembly of Queensland for the financial years ended 30 June 1988, 30 June 1989, and 30 June 1990.¹⁶

Nolan subsequently advised by letter dated 12 August 1991 that on the basis of legal advice he required a Notice to Produce Documents under Section 3.1 Criminal Justice Act to be served upon him.¹⁷ He later told the Commission that

¹³ Annexure 11

¹⁴ Annexure 12

¹⁵ Annexure 13

¹⁶ Annexure 14

¹⁷ Annexure 15

he did not wish to be obstructive but he had a duty to maintain confidentiality which was imposed upon him by the FA&A Act.

Nolan was orally advised by the Commission that it was bound by Section 3.7 of the Criminal Justice Act 1989 to seek the authority of the Supreme Court before issuing such a notice. Insofar as is relevant, Section 3.7 provides:

- "(1) If it appears to the Chairman or his delegate that –*
(a) a notice under section 3.1 would relate to information or a record or thing such that the person on whom the notice would be served is under a duty or an obligation imposed by Act or law or by oath taken to maintain confidentiality in relation to it;.....
the Chairman or his delegate shall not issue the notice.... except with the approval of a judge of the Supreme Court first obtained."

Consequently an application was made to the Supreme Court by the Commission and approval obtained to issue the notice.¹⁸ The notice was then served upon the Auditor-General who provided the documents required.¹⁹

In the Commission's opinion the matters raised by Doyle, of which Nolan was aware, should have given rise to a suspicion in him that the matters involved, or may have involved official misconduct. That being the case, Section 2.28(2) of the Criminal Justice Act placed a duty upon the Auditor-General to report his suspicions to the Commission.

Section 3.31 of the Act provides that a person on whom a provision of an Act enjoins a duty to maintain confidentiality with respect to any matter shall be taken not to have committed an offence against that Act by reason that he has furnished information concerning that matter to the Commission for the purpose of the discharge of the functions or responsibilities of the Commission. This section would have protected Nolan from any breach of the FA&A Act had he chosen to produce the documents voluntarily in these circumstances.

Had he taken this course the Commission could have quite legitimately avoided the cost of, and delay occasioned by, appearing before the Supreme Court.

¹⁸ Annexure 16

¹⁹ Annexure 17

6. **MEMBERS' ENTITLEMENT TO TRAVEL EXPENSES**

(a) **Members' Entitlement Booklet**

The entitlements of Members of the Legislative Assembly are specified in the document known as the "Members' Entitlement Booklet" [the booklet]. Over the years it was also known as the "Members' Entitlement Handbook". All manner of entitlements and allowances are particularised in the booklet which is the definitive publication on the subject. When first published, in 1979, entitlements in respect of the following matters were included:

1. Salary and Electorate Allowance
2. Daily Travelling Allowance
3. Air Travel for Members –
 - (a) Electorate and Brisbane
 - (b) Interstate Travel
 - (c) Intrastate Travel
 - (d) Electorate Travel
 - (e) Other Travel
4. Rail Travel for Members and Spouse or Nominee
5. Life Gold Pass
6. Air and Rail Travel for former Members of the Legislative Assembly and Relatives
7. Overseas Travel
8. Car Transport –
 - (a) Taxis
 - (b) Car Allowance
9. Postage Allowance
10. Printing Allowance
11. Telephone Facilities
12. Publications
13. Accommodation for Members

14. Electorate Secretary and Office
15. Personal Accident Insurance
16. Justices of the Peace

The booklet is subject to amendment from time to time and some of the above matters are no longer contained in it whilst other entitlements have been added. Copies of the booklet are provided to Members and amendments thereto are supplied to them by the Premier's Department.

(b) History of the Members' Entitlement Booklet

The booklet was first promulgated in March 1979 and was drafted following disclosures in a report by the then Auditor-General, A J Peel, in September 1978. His report (which became known as the "Peel Report") concerned an audit of the expenditures "Air Transport of Members" and "Allowances to Members (Travelling)".

In his report, Peel identified the use by Members and ex-Members of airline credits which amounted "to a misuse, and probably a deliberate misuse, of government funds"²⁰.

Peel also identified irregularities concerning claims by Members for Daily Travelling Allowance. His recommendations in this regard included:

- That guidelines be set down and issued to Members covering their entitlements to travelling allowances generally²¹; and
- that guidelines should be recorded covering the purpose and use of travelling allowances for the benefit of Members²².

²⁰ See page 6, Special Report by the Auditor-General dated 11 September 1978 on an "Audit of the Expenditure of Appropriations to Defray the Contingencies 'Air Transport of Members' and 'Allowances to Members' (Travelling)"

²¹ Ibid page 13

²² Ibid page 15

Consequently, following Cabinet decision 29393 of 23 October 1978, a document was prepared entitled "Report on an Administrative Inspection of Staffing and Organisational Arrangements of Parliament House".

The report dealt with a great many matters in addition to Parliamentary travel entitlements. Insofar as is relevant it recommended that guidelines for Members' entitlements be published in booklet form and that the conditions to apply to air travel by Members and the payment of the daily travelling allowance to Members be in accordance with the proposals put forward in the proposed booklet.

The report contained recommendations which formed the basis of the Members' Entitlement Booklet. It was recommended that daily travelling allowance be claimed by a Member:

".....only when he is travelling on Parliamentary business outside of his electorate and necessarily absent over night."

Previously there was no stated requirement that daily travelling allowance was payable only on Parliamentary business.

The entitlement to daily travelling allowance was prescribed in the booklet in the following terms:

"A Member may claim the Daily Travelling Allowance only when he is travelling on Parliamentary business outside his Electorate.

The Daily Travelling Allowance is not payable if a Member is travelling on Parliamentary business outside his Electorate and is provided with complimentary accommodation, meals, etc at Government expense.

When submitting a claim a Member shall indicate that the purpose of travel involved Parliamentary business, the time of departure and return, major centre or centres visited, and method of travel.

A member is not entitled to the daily travelling allowance when in residence at the Parliamentary complex."

There was no definition of the term "Parliamentary business".

Originally the claim form used by Members did not contain any certification by Members that the travel was on Parliamentary business. According to the Senior Executive Officer, Administrative Services, Parliament House, Robert Edwin Fick, such a certificate became a requirement in the early 1980's.

On 14 November 1988, Cabinet decided that the Director-General, Premier's Department, E Finger, should conduct an urgent review of Ministerial expenses and Parliamentary travel allowances and lay down guidelines on what could be legitimately claimed on a day to day basis, or while travelling on government business.

By that time the then Premier was aware of both Doyle's concerns as contained in his aide memoire and the disclosures by Donald Frederick Lane at the Commission Of Inquiry Into Possible Illegal Activities And Associated Police Misconduct at which Lane alleged abuses of the Ministerial expenses scheme.

The review by the Director-General was concluded by the end of the year. In compiling his report the Director-General canvassed the views of Members and Ministers. In November the Auditor-General and the Clerk of the Parliament were provided with drafts of the report for their perusal and comment. Doyle's response included criticism that the proposals still lacked some essential elements of accountability, a reiteration of his concerns about the manner in which the schemes appeared to have been recently used, and a statement that there must be enhanced substantiation requirements and approval processes implemented prior to the tabling of his Supplementary Report on audits for 1987-88 early in the 1989 Autumn Session.

By letter dated 2 December 1988, Finger asked for the Auditor-General's comment on further material enclosed. Doyle responded briefly on the same day with some criticism of the content of the proposals.

Doyle wrote to Finger on 9 December 1988 in response to a Cabinet Decision which approved a scheme for Ministerial Expenses. Doyle expressed disappointment that the proposal put up by Finger had been diluted in several areas.

On the matter of the results of the Finger review into Parliamentary travel entitlements, Doyle expressed his reservations about the effectiveness of resulting amendments to the guidelines, in particular the looseness of the definition of "Parliamentary business".

The first time a definition of "Parliamentary business" was included in the booklet was in March 1989. It was:

- (a) *Sittings of the Legislative Assembly, or direct travel of a Member to or from such sittings;*
- (b) *A meeting of a Parliamentary committee of which he/she is a Member, or the Member's direct travel to or from such a meeting;*

- (c) *Attendance at a function representing a Minister or the Speaker on official business as a Minister or Speaker, or direct travel to or from such a function;*
- (d) *A meeting of the Member's Parliamentary party, of its Executive or of one of its committees or the Member's direct travel to or from such a meeting;*
- (e) *Attendance at official Government, Parliamentary or Vice-regal functions;*
- (f) *Attending to electorate business as a Parliamentary representative; and*
- (g) *Studies, investigation or enquiries on matters related to a Member's duties and responsibilities as a Member of Parliament.*

The Director-General's report also recommended that the "Travel for Members and Spouses" section of the booklet include a requirement that Members certify that their travel was undertaken for the purpose of conducting Parliamentary business. That recommendation was followed.

In a letter dated 7 December 1988, the Premier, Ahern, advised the Speaker as Chairman of the Parliamentary Service Commission, that Cabinet had decided to recommend the above changes to the guidelines. Interestingly, a number of Cabinet's significant proposals were not followed, namely:

- paragraph (g) was to be qualified by the words:
".....as may be necessary to become better informed and thus contribute usefully to debates in the Legislative Assembly.";
- Members should be required to state the nature of the Parliamentary business undertaken when claiming daily travel allowance and expenses under "Travel for Members and Spouses";
- for journeys of more than 5 days Members should provide a report to the Parliamentary Service Commission and that it examine ways of monitoring Members' use of daily travelling allowance; and
- details of Members' entitlements and amendments thereto be published in the Government Gazette.

As previously stated, on 10 October 1990, the Courier-Mail disclosed the contents of Doyle's aide memoire. On the following day The Honourable The Speaker Mr Fouras; the Auditor-General of Queensland, Nolan; the Audit Director, D E Jones;

the Clerk of the Parliament, Woodward; and Fick met to discuss the revelations and to consider what action was necessary.

By memorandum dated 19 October 1990 from Jones and Fick to The Speaker and Nolan the discussions were summarised. It seems they agreed that it was desirable that the definition of "Parliamentary business" needed to be expanded "*.....to provide more defined guidelines within which Members can operate and to provide more accountability with respect to audit and public scrutiny.*"

In what can only be described as a lifebuoy being thrown to Members and Accountable Officers alike, they go on to write:

"Prior to March, 1989 Members had been required to certify that their travel expenses had been incurred whilst on Parliamentary business without the benefit of a definition of Parliamentary business."

and further:

"Far greater protection for Members and improved financial control could be achieved by having Members provide a more precise certification as to the nature, purpose and other information on their claim in order to identify the Parliamentary Business involved."

On 20 December 1990 the Clerk of the Parliament was advised by the Executive Director, Government and Corporate Services Division, that certain amendments had been made to the Members' Entitlements Booklet. Included amongst those amendments was an expanded definition of Parliamentary business where, in paragraph 15(g), "Parliamentary business" was said to include:

"Studies, investigation, or enquiries on matters related to a Member's duties and responsibilities as a Member of Parliament provided that the nature, official purpose, place and, if applicable, other relevant information is stated by the Member to identify the Parliamentary business involved."

Consequently Members were also required at the time of lodging their claims to fill out a form which sought to obtain particulars of the studies, investigations, or inquiries being conducted by Members in relation to Parliamentary business.²³ More will be said of this document later in this report.

On 12 September 1991 the Clerk of the Parliament was advised of a further amendment to the definition of the term "Parliamentary business". Relevant to this matter was the addition of a new paragraph (h):

"Attending and/or addressing conferences, functions, meetings and seminars to which a Member has been invited in his/her capacity as a Member of Parliament."

(c) Method of Amending Members' Entitlement Booklet

Richardson, Executive Officer, Government and Executive Service Branch, Premier's Department, gave evidence on oath at a confidential hearing of the Commission. He remains responsible for implementing many of the administrative processes involved with Parliamentary and constitutional matters.

He stated that it has been the practice of Executive Government to determine entitlements of Members which would then be submitted to the Governor-in-Council for approval. He agreed that the Members' Entitlement booklet is the definitive statement on Members' travel entitlements.

Cabinet consideration of an entitlement may occur as a result of an oral or written submission. If a written submission in respect of entitlements was required, it was Richardson's responsibility to prepare the document which would include information on relevant entitlements existing at the time.

In his view amendments to the booklet were made on an ad hoc basis as and when issues arose. Consequently the booklet, after its inception, was not considered as a whole and amendments were made without attention to the impact that one amendment might have had on the overall scheme. Such an approach created problems. For example, in one section the entitlement was specifically conditional upon the Member conducting Parliamentary business whilst in other sections it was not.

The manner in which the booklet was amended insofar as daily travelling entitlements were concerned supports Richardson's opinion. Amendments followed both Doyle's aide memoire and the Courier-Mail article and, as will be observed later in this report, certain anomalous consequences flowed from such an ad hoc approach.

The Parliamentary Service Commission (PSC) also has some input into the composition of the guidelines. The PSC was created by the Parliamentary Service Act 1988 and its members are:

- the Speaker of the Legislative Assembly;
- the Chairman of Committees;
- the Leader of the House or nominee;
- the Leader of the Opposition or nominee; and
- three other Members of the Legislative Assembly.

The PSC has a number of functions but generally it is responsible for determining major policies to guide the operation and management of the Parliamentary Service and to prepare budgets for itself, the Legislative Assembly and the Parliamentary Service.

It will be apparent from what has been written that no formal procedure has been developed to determine guidelines for Members' entitlements.

7. **ENTITLEMENTS OF MEMBERS OF PARLIAMENT - OTHER PLACES**

(a) **Requests for Information**

The Commission wrote to the Auditors-General of the Commonwealth of Australia, the other States of Australia, New Zealand and Canada asking for advice on the nature, establishment, administration and control of entitlements of Members of Parliament in their area of governance.

This information was sought to assist the Commission in formulating recommendations to improve the system in Queensland.

Responses have been received from the eight Auditors-General. In the case of Western Australia information was provided on a confidential basis.

(b) **The Situation In Other Places**

Commonwealth of Australia

Entitlements of Senators and Members of the Commonwealth Parliament are set out in a handbook issued by the Department of Administrative Services. A copy of the handbook was provided to the Commission by the Auditor-General.

The Departments of the House of Representatives and of the Senate are responsible for travelling allowances of Members and Senators respectively and the Department of Administrative Services arranges payment of other travel costs.

Rates and conditions are determined and reviewed by the Remuneration Tribunal and are subject to variation by regulation under the **Parliamentary Entitlements Act 1990**.

Daily travelling allowance is payable to Parliamentarians for overnight stays away from home base when occasioned primarily by Parliamentary sittings, official business, Parliamentary Committee meetings, Parliamentary Political Party meetings and attendance at official Government Parliamentary and Vice-Regal functions and the like.

The Remuneration Tribunal provides various other entitlements for Parliamentarians including:

- domestic travel – for Parliamentary or electorate business (but excluding Party business);
- overseas travel – financial assistance for studies and investigations related to their duties and responsibilities as Parliamentarians after three years of service; and
- family travel – a limited number of return visits between the Electorate and Canberra for spouse/nominee and a lesser number for dependent children; and provision for the spouse/nominee for an interstate visit and visits to official Government, Parliamentary or Vice-Regal functions.

The Auditor-General provided the Commission with a copy of his 1991 report to the Australian Parliament on the audit of the Department of Administrative Services – Services Provided to Members of Parliament and Their Staff.

Of interest are the Auditor-General's comments relating to the difficulty encountered by Certifying Officers in ensuring that public money relating to expenditure on Parliamentary entitlements is spent lawfully.

In particular, Certifying Officers experienced practical difficulty in satisfying themselves that expenditure was in accordance with prescribed conditions because of lack of adequate definition of terms such as "Parliamentary", "Electorate" and "official business", and because of a lack of adequate documentation provided to support payments.

The Auditor-General argued in his report, under the heading: "Audit comment and recommendations" as follows:

"2.6.1 The Australian National Audit Office accepts that some of the common internal control mechanisms and administrative arrangements applicable in the public sector which are listed in paragraph 2.1.3 are not compatible with, or applicable to, a program which provides services to parliamentarians. It could be argued also that it is unacceptably intrusive and costly for day-to-day activities and expenditures of parliamentarians to be subjected to detailed scrutiny by the bureaucracy.

2.6.2 *On the other hand, some level of scrutiny and inquiry must be considered necessary in order to establish that the expenditure of public moneys is lawful and that effective and efficient use of public moneys appropriated has been made.*

2.6.3 *Essentially, a commonsense balance must be struck, taking account of the legal framework, the nature of the responsibilities involved, the environment in which parliamentarians operate, and public expectations. The ANAO considers that it is reasonable to have procedures in place that provide for parliamentarians, who are in the best position to know the full scope of their duties, to certify their expenditures in terms similar to those which apply to the expenditure of other public moneys."*

He went on to recommend, among other things, that enhanced reporting arrangements be put in place not only to assist Parliamentarians in managing and monitoring the resources provided but also to facilitate public accountability.

Tasmania

The framework for establishing allowances for Members of Parliament is provided by the Parliamentary Salaries and Allowances Act 1973.

The Acting Auditor-General of Tasmania advised that travelling allowances are payable for attendance at party and committee meetings, and sittings of Parliament, and that prescribed office-holders, (principally Members of Cabinet) are entitled to such allowances on all Parliamentary business.

In addition, all Members are entitled to an annual private travel entitlement of \$3,000, payable in accordance with the Rules of Travel issued by the Speaker and the President and ratified by Cabinet in 1988.

The Acting Auditor-General enclosed a copy of his first Report on the audit of the Public Account to both Houses of Parliament for the year ended 30 June 1991. The report included the results of the audit of "Claims for Travel and Other Expenses of Members of Parliament".

Although the report contained no adverse findings with respect to abuse of entitlements, some of the findings, as quoted below, are pertinent to the Commission's inquiry:

- *"The existing legislation and administrative arrangements, in some areas, make it difficult for certifying officers and auditors to establish whether certain entitlements are in accordance with legislative or other provisions.*
- *Legislation needs to be reviewed and updated to define more clearly the conditions for payment of a number of entitlements.*
- *There is a case for better reporting, both to the public and to Members of Parliament, of the level of expenditure of public funds for the benefit of Members and for the operations of the Parliament as a whole."*²⁴

South Australia

A summary of the policies and procedures which cover payment of travel entitlements to members of Parliament was provided by the Auditor-General of South Australia.

Entitlements are payable in accordance with the "Members of Parliament Travel Entitlement Rules 1983", a copy of which was sent to the Commission by the Clerk of the House of Assembly.

The travel entitlements for each Member consist generally of one annual basic allowance up to a set value, to cover costs of travel and per diem allowances in Australia and overseas. The basic allowance may cover travel costs of the Member's Spouse or Immediate Family in certain circumstances.

Two requirements of particular interest to the Commission, were:

- A report on all overseas travel and on travel within Australia of a duration of more than five nights is required to be furnished to the Presiding Officer by Members.
- Members, upon election or re-election, must (before any basic allowance payment is made to them) execute and lodge with the relevant Clerk of the House a statutory declaration to the effect that they will comply with the rules relating to their travel entitlements.

²⁴ Tasmania: Report of the Auditor-General on the audit of the Public Account for the year ended 30 June 1991, No 1 of 1991 September 1991 pages 39-40.

Victoria

The Auditor-General provided the Commission with information relating to Parliamentary Allowances as determined by the Parliamentary Allowances Regulations 1981 (Statutory Rule No: 283/1981) (as amended); Members' Electorate Service Entitlement; and Air Travel Entitlements.

Generally, travelling allowances are payable to Members attending Parliamentary sittings or official functions where required to stay overnight outside their Electorate or where absent from their home base for more than six hours. The rates payable are subject to various conditions. No documentary evidence is required to substantiate claims.

The conditions for Members' air travel are set by the Members of Parliament Travel Entitlement Policy - November 1990. The document initially provided for four trips per Member per annum.

This trip limitation was abolished in August 1991 with the introduction of an Electorate Service Entitlement. Such entitlement allowed Members the flexibility of a global annual budget for the purpose of maintaining their electorate office services but with a built-in air travel component. Members manage these funds as they see fit, although they are subject to annual audit by the Auditor-General.

The Auditor-General advised that, at his suggestion, the Presiding Officers of Parliament intend to develop a Code of Conduct for Members to provide guidance in the use of entitlements. He expressed reservations as to the administrative capacity and resources of parliamentary staff in monitoring the entitlements of 132 Parliamentarians.

The guidelines governing air travel allow Members to use their entitlements to meet such costs for spouses, children and other nominated persons.

The stated purpose of the scheme is to allow Members to meet Parliamentary counterparts, study particular areas of interest and to generally enrich their knowledge of other parts of Australia and Commonwealth nations in the South Pacific region.

Reliance is placed solely on the integrity of Members in following guidelines.

The Auditor-General made comment to the effect that it is difficult to ensure that there are satisfactory internal controls in place over Parliamentary entitlements and allowances. He made the point that to effect change in this area is entirely up to Parliament which must be convinced of the need for additional controls. He recognised what he termed an understandable reluctance to impose internal controls that directly question the integrity of a Member.

New South Wales

The Deputy Auditor-General advised that travel allowances paid to members of Parliament are subject to annual determination by the Parliamentary Remuneration Tribunal, established under the Parliamentary Remuneration Act 1989. The Tribunal is headed by a Judge of the Supreme Court of New South Wales, who is appointed by the Chief Justice of that Court.

The allowances fall into four categories as summarised:

1. Air Travel Warrants – all Members are entitled to a specified number of trips by air per Parliament for travel between the electorate and Sydney and for interstate and intrastate travel. A number of travel warrants is available for a Member's spouse. Under recent amendments, Members are entitled to reimbursement for motor vehicle, accommodation, meal and incidental expenses in lieu of intrastate air travel.
2. Special (Living Away From Home) Allowance – an allowance paid to country Members towards the cost of overnight accommodation whilst in Sydney, or in transit to and from Sydney. The allowance is payable either on a daily or annual basis and is subject to limits depending on a Member's Parliamentary position and the location of his or her Electorate.
3. Reimbursement of Charter Transport – the Members of ten electorates are entitled to an annual allowance for the reimbursement of charter transport services. The charter transport is intended for use within and for the service of the Member's Electorate.
4. Travel Allowances for the Premier, Ministers of the Crown, Recognised Office Holders and Committee Members – such members are entitled to daily travelling allowance when travelling on official business.

Of interest is the comment by the Deputy Auditor-General that the only regular use of the daily travelling allowance (see 4 above) is by Members of Committees when travelling in relation to their committee work.

New Zealand

The Controller and Auditor-General referred the Commission's request for information to the General Manager of the Parliamentary Service of New Zealand.

The General Manager provided the Commission with a copy of "The Parliamentary Salaries and Allowances Determination 1990" as established by the Higher Salaries Commission.

The document sets out the purpose, rates and conditions for various allowances but not the procedures by which claims are verified as complying with the Determination.

The provisions relating to entitlement to travelling allowances require the Member to be on Parliamentary business although this term is not defined.

The determination contains an explanatory memorandum of what each allowance is meant to cover. Of interest is a statement by the Higher Salaries Commission that it distinguishes between:

- benefits (or "perks") available by virtue of the type of employment or the position held; and
- reimbursement of costs incurred in the course of employment.

In this regard, the Higher Salaries Commission makes the point that the allowances covered by the Determination are viewed by it as purely reimbursements of costs incurred by Parliamentarians in providing the services electors expect of them.

The General Manager advised that before certifying claims as correct for payment, there was no requirement for supporting documentation. However, claims require a certification as to their correctness and compliance with the law not only by Members, but also by the Parliamentary Whip.

Canada

The Auditor-General explained that Members of the Canadian House of Commons travel in various capacities and charge the travel to different budgets.

Payments relating to travel as a Member of Parliament are made pursuant to provisions of the Parliament of Canada Act.

On the recommendation of the Standing Committee on Management and Members' Services, the Board of Internal Economy of the House of Commons has developed policies for the reimbursement of travel expenses.

They include a "travel point system" which limits the annual number of trips in Canada by the Member, spouse and office staff, and a per diem allowance for accommodation up to an annual monetary limit available while in "travel status" and subject to production of receipts.

In relation to the controls desirable for proper accountability, the Auditor-General advised that they need to include clear administrative policies on:

- "- *the various budgets from which travel can be funded;*
- *travel authorization (who is eligible to travel and who can approve the travel);*
- *the approved purposes for travel;*
- *the expenses that can be reimbursed and the rate of reimbursement;*
- *the procedures for submitting claims and the need for receipts;*
- *a requirement for certification by the person making the expenditure that the monies were spent only for approved purposes, and a requirement for further approval by the Member;*
- *a review and approval of the reimbursement claim by the equivalent of a Comptroller; and,*
- *a provision for audit."*

8. APPROVAL AND PAYMENT OF CLAIMS FOR DAILY TRAVEL ALLOWANCE

(a) **The Claim**

In order to claim daily travelling allowance Members of the 1986 Parliament were required to submit a claim in the form of a document entitled "Direct Invoice".²⁵

In the section "Particulars of Claim" there were several proforma words including a description of the claim as being for "Daily Travelling Allowance". The Member was required to state the time and dates of departure and return, the place of departure and the destination.

The claimant was also to certify:

".....that the sum of \$..... set forth above is due and payable to me for goods supplied, services rendered, or works constructed as indicated and hereby authorise the payment of that sum on my behalf, whilst on Parliamentary business."

The Member would then sign and date the certificate.

There followed a number of certifications by various "Authorised Accounting Officers".

Nowhere in the document was there provision for a description of the Parliamentary business attended to by the Member. In none of the hundreds of claims examined by the Commission was there any indication, on the face of the claim, of the nature of the Parliamentary business conducted by the Member on his or her journey.

In all but a negligible number of claims, there were no accompanying reports, notes or other documents which described or evidenced the Parliamentary business undertaken by the Member on his or her travels.

Indeed, at a confidential hearing of the Commission, Fick, whose responsibilities include authorising payment of entitlements to Members, confirmed that in normal circumstances at that time, supporting documentation was simply not provided – nor required. It was sufficient that the Member certified that the travel was on Parliamentary business.

In December 1990 (that is, after the Commission's investigation had begun) a new claim form²⁶ was introduced requiring the Member to indicate the nature of the Parliamentary business conducted on the journey.

(b) Responsibility for Approval of Payment of Claims

Practice 1986-1989

In his evidence Fick explained that in his position as Senior Executive Officer at Parliament House he maintains financial control over the Legislative Assembly including expenses incurred in running the complex and payment of Members' entitlements. He is directly responsible to the Clerk of the Parliament.

Claims for daily travelling allowances or other travel entitlements, when submitted by a Member, were first scrutinised by the accounting staff under Fick's control. They would do the following things:

- Check that the Member had a balance or entitlement due. (For example that the Member still had a balance of the 28 days daily travelling allowance entitlement available);
- Check that the claim was properly certified by the claimant;
- Check to ensure that funds were available from the annual appropriation.

The claim would then be given final certification as correct for payment by Fick, or whoever was in his position at the relevant time.

Fick agreed that these checks were purely an accounting exercise to ensure the numerical or dollar limits placed on entitlements were not exceeded and at no time were questions asked as to whether the expenditure was legitimately incurred. In Fick's words, it was up to the Member to consider whether the claim was warranted – claims were taken as legitimate simply on the basis of submission and certification by Members.

Practice December 1990 to Present

The guidelines now provide that Members, when submitting claims for travel expenses, shall certify, in a form specified by the Clerk of the Parliament, that the travel involved Parliamentary business.

The Member must now certify in a pro forma covering letter that the travel was undertaken for the purpose of Parliamentary business.²⁷ The letter lists the categories, reflecting the definition of the term, for selection by Members, ticking a box, to indicate the particular type of Parliamentary business applicable to a given claim. In respect of paragraph (g) of the definition the Member must show the nature, official purpose, place and other details. In the case of daily travelling allowance a certificate of the claimant Member, on the reverse of the claim, is in similar terms to the covering letter and must be completed.²⁸

Asked the extent of detail now provided by Members on the claim form Fick stated that they indicated the nature of the travel, for example a Grain Growers Council meeting or a conference. On his evidence, very little travel is presently unrelated to a particular function, conference or investigation relating to the portfolio of the Member making the claim. Furthermore many Members are contacting Fick's office to ascertain whether their travel falls within the guidelines.

According to Fick if a Member fails to provide sufficient particulars on the new forms he or she is contacted, the form returned, and further particulars requested. In addition, if the travel were obviously not, in his opinion, involving Parliamentary business he would seek clarification from the Member. If the Member failed to satisfy him he would reject the claim.

Prior to the definition of Parliamentary business being included in the booklet Fick considered he was unable to determine whether a claim was legitimate or not and accordingly had to accept the Member's certification. Now with the new form and the definition he says he is in a better position to make a judgement as to whether the travel related to Parliamentary business.

²⁷ Annexure 20

²⁸ Annexure 21

9. THE CLERK OF THE PARLIAMENT

(a) **Responsibility as Accountable Officer**

The Clerk of the Parliament is the Chief Executive of the Legislative Assembly offices. Apart from his duties as the principal recording officer of the House, he is, under Section 35(3) of the FA&A Act the accountable officer for accounts relating to the Legislative Assembly, Parliamentary Service Commission and the Parliamentary Service. Section 36 of the FA&A Act provides, insofar as is relevant:

"36. Functions and duties of accountable officer. (1) Every accountable officer -

- (a) shall manage appropriations for the services with respect to the department under his control efficiently and economically and avoid waste and extravagance;*
- (b) shall cause to be faithfully and properly kept in compliance with the prescribed requirements the several accounts of the department that are required to be kept by this Act or any other Act or Law;*
- (c) shall ensure -*
 - (i) that procedures within the department are such as will at all times afford proper control over expenditure;*
 - (ii) that expenditure is incurred for lawful purposes and is made in compliance with the prescribed requirements;*
 - (iii) that as far as is possible having regard to the limits of his powers and control, reasonable value is obtained for moneys expended;*
- (d) shall ensure that procedures within the department, and internal checks, afford at all times adequate safeguards with respect to -*

- (i) *the correctness, regularity and propriety of payments made;*
- (ii) *the assessment, levy and collection of revenue and other amounts receivable, the receiving, safekeeping, banking of and accounting for public moneys and other moneys and the purchase, receipt, issue, sale, custody, control, management and disposal of and accounting for public property and other property;*
- (iii) *the prevention of fraud or mistake;"*

The above extract is taken from the FA&A Act as it was at the time of the 1986 - 1989 Legislative Assembly. The subsequent amendments have not materially altered the section.

The Administration Section of the Clerk's office, of which Fick is the senior officer, is responsible for payment of Members' travel entitlements.

Alan Robert Woodward was the Clerk of the Parliament from 1979 until his retirement on 18 October 1991. He gave evidence at a confidential hearing of the Commission. He told the Commission that the Administration Section of his office was created following the Peel Report and subsequent review of practices relating to Members' entitlements.

(b) The Clerk's Knowledge of the Auditor-General's Concerns

Doyle stated in evidence that he thought he rang Woodward on 21 October 1988, the day after his discussion with the Premier, to advise him, as a matter of courtesy, of his meeting with the Premier. He did so because there was a great deal of rumour in the halls of Parliament concerning these discussions and he wanted to let Woodward know what it was about.

Woodward told the Commission that he first became aware of Doyle's concerns in respect of Daily Travelling Allowance when the matter was first raised during Parliamentary debate on 17 November 1988, almost a month after the Auditor-General's visit to the Premier. Later that day he discussed the matter with Doyle who told him that he had raised these concerns with the Premier. Woodward then spoke with the Speaker, L W Powell and on the basis of these discussions a statement was made by the Speaker in the House on 17 November.

The Speaker said:

"Honourable Members,

the 17 November edition of the Courier-Mail carried an article entitled "Many MP's in rorts blitz". The second paragraph of the article stated - "A senior audit official yesterday confirmed that 'serious anomalies' involving thousands of dollars had been disclosed when accounts were matched against claims". The Clerk of the Parliament, as accountable officer, has contacted the Auditor-General, an officer of this Parliament, who has assured the Clerk that those words are not accurate. On 20 October 1988 the Auditor-General advised the Clerk of the Parliament that the authorised auditor had submitted to the Auditor-General his report on the audit of the books and accounts of the Legislative Assembly for the past financial year.

The Auditor-General advised that the results of the audit were satisfactory.

Furthermore, the Auditor-General has given an assurance that the matters mentioned in his media release quoted in Parliament on 17 November by the Acting Premier have nothing to do with the administration of the guidelines of Members' entitlements by officers of the Legislative Assembly.

The Auditor-General has further advised that the entitlements have been correctly administered in accordance with the guidelines approved by the Executive Council.

Therefore, Honourable Members, I am satisfied that the guidelines have been adhered to correctly and I am happy to defend the integrity of all officers who administer Parliamentary Accounts."

He correctly pointed out that the Auditor-General reported that the results of the audit were satisfactory. Further he stated that the administration of the guidelines was correct which was certainly the Auditor-General's view. But he omitted entirely the relevant subject of Doyle's media release, namely the possible misuse of Parliamentary travel entitlements. The Parliament may well have been left with the impression that all was well. It was given no information on the matters raised by Doyle with the Premier on 20 October 1988.

It seems clear that Woodward would not have been informed of Doyle's concerns had the matter not been raised in Parliament on 17 November or, on Doyle's recollection, had rumours not been circulating about it.

Whilst the Commission was surprised and troubled by the Auditor-General's decision to raise such a matter with the Premier without advising the Accountable Officer, it appears that Woodward does not share the Commission's view.

When questioned about these events he initially stated that he was surprised and concerned when the matter was raised but later told the Commission that "nothing really surprised him anymore". He chose not to ask the Auditor-General why he had not raised this matter with him, preferring to "get on and address the problem".

More will be said of the Auditor-General's role later in this report.

(c) Payment of Travel Entitlements

In the Commission's view the FA&A Act clearly establishes that it is the responsibility of the Clerk of the Parliament, as Accountable Officer, to put in place a system which ensures that payments of travel entitlements are in accordance with the guidelines establishing the conditions on which a Member may claim such entitlements. In other words, he must ensure that expenditure is for a lawful purpose and made in compliance with the prescribed requirements. [Section 36(1)(c)(ii) FA&A Act]. Further he must ensure that at all times there are systems in place to afford adequate safeguards with respect to prevention of fraud. [Section 36(1)(d)(iii) FA&A Act].

Insofar as claims for daily travelling allowance are concerned, they may be paid by the Clerk's office only when a Member travels on Parliamentary business. As previously observed, there was no definition of that term until March 1989, nearly two and a half years after the election of the 1986 Parliament and 10 years after the guidelines were established.

Despite this omission, it is the Commission's view that the Clerk should have established a working definition of the term. Afterall, without such a definition, it does not seem possible that he could be sure that expenditure was for a lawful purpose.

According to Woodward, no such definition was established. In his words:

"Parliamentary business is very difficult to define and I am not in a position to understand what Members might term as Parliamentary business...they are elected as Members and they have their own interests in, perhaps as a Shadow Minister or something like that, to follow and I would find it very difficult to define exactly what Parliamentary business is."

Consequently he and his staff accepted the certification of Members, that the travel was on Parliamentary business, and the claim for daily travelling allowance was duly paid.

Further, there was no indication on the claim which disclosed the nature of Parliamentary business.

When asked how he could be sure of the propriety of payments when he or his staff had no indication of the nature of the travel he replied:

"Well, they're called Members' entitlements, and I think that's the way members have viewed them, and if they're entitled to 28 days daily travelling allowance a year and they are certifying to the fact that they've been on Parliamentary business, I don't know that I've got any option but to - but to accept their word and their signature."

Woodward stated that he was not arguing that the entitlements were payable unconditionally but that they were subject to the guidelines. In the Commission's view however, these guidelines provide that daily travelling allowance is only payable for travel conducted whilst on Parliamentary business, yet the Commission heard that Woodward's officers had not established a definition of that term.

At the confidential hearing it was also suggested to Woodward that his responsibilities were to ensure that there were adequate safeguards for the prevention of fraud. His reply:

"I know what's in the Act, and with respect to the Act, and with respect to working in a Parliament and administering guidelines for Members, in my view it's extremely difficult on all occasions to...to go along with entitlements and all that sort of thing...There are obvious difficulties in that."

It seems therefore that Woodward was arguing that he had difficulty in administering the legislation. In this regard he commented on another occasion:

"I don't think we had a right to cross examine Members on what they may have done in the last 7 days when they were away in New South Wales and Victoria for example...They're not part of my staff. I think Members are in a slightly different position to Public Servants in some respects. I don't think they would have appreciated that very much if we'd have asked them. ...I don't believe we have a right to ask Members, and I am quite sure they would very quickly tell us where to go if we did question them as to whether they had gone on Parliamentary business."