

# **THE SHEPHERDSON INQUIRY**

**AN INVESTIGATION INTO ELECTORAL FRAUD**

**APRIL 2001**



## FOREWORD

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This report presents the results of the independent Inquiry by the Honourable Tom Farquhar Shepherdson, QC, into allegations of electoral fraud. The Inquiry was prompted when a member of the Australian Labor Party (ALP), Karen Lynn Ehrmann, made serious public allegations about the possibility of electoral fraud by members of the Queensland branch of the ALP.

On 15 August 2000, the Criminal Justice Commission (CJC) initiated preliminary inquiries into Ehrmann's allegations, including sending a team of investigators to Townsville to conduct interviews. On 22 August, Mr P D McMurdo, QC, was asked to advise the CJC on whether Ehrmann's allegations raised a reasonable suspicion of official misconduct and whether open hearings should be held. Mr McMurdo advised that a reasonable suspicion of official misconduct did exist and that the CJC could hold public hearings; he also recommended terms of reference for such an Inquiry. His advice was delivered as a public report to Parliament in September 2000.

The CJC accepted Mr McMurdo's advice and, with the support of the Parliamentary Criminal Justice Committee (PCJC), engaged the services of Mr Shepherdson, an independent qualified legal practitioner, to conduct the Inquiry with Mr R V Hanson, QC, engaged as Counsel Assisting. Twice during the course of the investigation the terms of reference were extended by the CJC, again with the support of the PCJC, on the recommendation of Mr Shepherdson and Mr Hanson. On 17 April 2001, Mr Shepherdson handed the CJC his report. On 20 April 2001, the CJC resolved to adopt Mr Shepherdson's report as a report of the CJC.

The report sets out the evidence bearing on the terms of reference and addresses the question of whether there is sufficient evidence to refer any matter to an appropriate prosecuting authority for consideration. Mr Shepherdson has recommended that two matters be referred, and the CJC has resolved to adopt his recommendation.

The terms of reference did not specifically include for consideration any recommendations for electoral reform. One of the reasons for this was that it was believed that any electoral reform was best addressed by a global consideration of all relevant issues and not conducted in a piecemeal fashion. The advice of Mr McMurdo highlighted that the provisions of the *Criminal Justice Act 1989* do not empower the CJC to investigate electoral fraud per se. For the CJC to have jurisdiction there must be a relevant and sufficient connection between the conduct concerned and a particular appointment in a unit of public administration. In these circumstances it was considered that the Joint Standing Committee on Electoral Matters and the Legal Constitutional and Administrative Review Committee were better placed to make any general recommendations for reform of the electoral system. However, Mr Shepherdson has made a number of comments and observations on the perceived weaknesses in the present electoral system that have been exposed by the Inquiry. I hope these comments and observations will be of assistance to these two bodies and any other body that may be requested to look at the issue of electoral reform generally.

The CJC is grateful for the efforts of Mr Shepherdson, Mr Hanson and the CJC officers who assisted them. The CJC is also grateful for the contribution of the Australian Federal Police, the Australian Electoral Commission and the Electoral Commission Queensland, without whose cooperation and assistance the investigation could not have been successfully conducted. I also wish to thank the Commonwealth Director of Public Prosecutions for its assistance in permitting the CJC to second for the duration of the Inquiry, Wendy Barber, one of its senior legal officers. Ms Barber had been involved in the prosecution and conviction of Ehrmann and two other ALP members and had invaluable background knowledge of those matters.

The importance of this Inquiry can already be seen. The open hearings exposed to public scrutiny evidence of attacks on the integrity of the electoral roll — a public document fundamental to our system of democracy. Public debate followed. Electoral reform is now high on the agenda of the State and Commonwealth Governments. I trust the result will be an electoral system in which all members of the community can be confident.

**BRENDAN BUTLER SC**  
Chairperson

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## ABBREVIATIONS

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ALP	Australian Labor Party (Queensland Branch)
AWU	Australian Workers Union
BCC	Brisbane City Council
CE Act	<i>Commonwealth Electoral Act 1918</i> (Cwlth)
Chairman	The Honourable T F Shepherdson QC, authorised by the CJC to conduct hearings for this Inquiry
CJ Act	<i>Criminal Justice Act 1989</i> (Qld)
CJC	Criminal Justice Commission
Crimes Act	<i>Crimes Act 1914</i> (Cwlth)
EARC	Electoral and Administrative Review Commission
EARC Act	<i>Electoral and Administrative Review Act 1989–1990</i> (Qld)
Fitzgerald Report	<i>Report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Conduct</i>
GRO	General Returning Officer
JSCEM	Joint Standing Committee on Electoral Matters (Commonwealth)
LCARC	Legal, Constitutional and Administrative Review Committee (of the Legislative Assembly) — a committee established by the <i>Parliamentary Committees Act 1995</i>
MLA	Member of the Legislative Assembly
PCJC	Parliamentary Criminal Justice Committee (body that oversees the CJC)
RP Act	Representation of the People Act 1983 (UK)

## LIST OF PLAYERS

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### **David Peter Barbagallo**

Former Secretary of the East Brisbane branch of the ALP and involved in the 1986 plebiscite for the state electorate of South Brisbane.

### **Catherine Bermingham**

Candidate for the 1996 plebiscite for the Brisbane City Council ward of East Brisbane and councillor for that ward since March 1997. The sister of Lee Michael Bermingham.

### **Lee Michael Bermingham**

Former ALP State Organiser and close working associate of Warwick Powell. Worked on the 1993 and 1996 plebiscites for the Brisbane City Council ward of East Brisbane and the 1996 plebiscite for the state electorate of Townsville. Also worked on Anthony John Mooney's campaign as ALP candidate in the Mundingburra by-election.

### **Joan Budd**

General Returning Officer of the ALP from 1988 until late 2000.

### **Karen Lynn Ehrmann**

Former councillor for the Townsville City Council who pleaded guilty to 47 charges relating to forged electoral enrolment forms. She alleged that she was a 'bit player' in a wider ALP scheme to indulge in such conduct.

### **James Peter Elder**

Member for the state electorate of Manly and subsequently Capalaba from 1989 until February 2001 and former Deputy Premier.

### **Joseph Seconto Felice**

Associate of Lee Bermingham and Warwick Powell. Worked on the 1993 and 1996 plebiscites for the Brisbane City Council ward of East Brisbane and the 1996 plebiscite for the state electorate of Townsville.

### **Gary Bernard Fenlon**

Member for the state electorate of Greenslopes from 1989 to 1995 and from 1998 to the present.

### **Shane John Foster**

Former part-time councillor of the Townsville City Council who pleaded guilty to 11 charges of forging electoral enrolment forms.

### **Linda Elizabeth Holliday**

Unsuccessful candidate for the 1993 plebiscite for the Brisbane City Council ward of Morningside.

### **Sharon Linda Humphreys**

Successful candidate for the 1993 plebiscite for the Brisbane City Council ward of Morningside and councillor for that ward since 1994.

### **Michael Hans Kaiser**

Former State Secretary of the ALP — Member for the state electorate of Woodridge from February 2000 until February 2001.

**Andrew James Kehoe**

Pleaded guilty to 10 charges of forging electoral enrolment forms relating to the 1996 plebiscite for Townsville.

**Paul Thomas Lucas**

Member for the state electorate of Lytton since 1996.

**Anthony John Mooney**

Mayor of the Townsville City Council and unsuccessful candidate for the 1996 plebiscite for the state electorate of Townsville.

**Dennis Mullins**

Unsuccessful candidate for the 1996 plebiscite for the Brisbane City Council ward of East Brisbane.

**Grant Steven Musgrove**

Successful candidate for the 1997 plebiscite for the state electorate of Springwood and Member for Springwood from 1998 until February 2001.

**Warwick Powell**

Close working associate of Lee Bermingham. Worked on the 1993 and 1996 plebiscites for the Brisbane City Council ward of East Brisbane.

**Kerry Marie Rea**

Unsuccessful candidate for the 1993 preselection for the Brisbane City Council ward of East Brisbane.

**Michael Francis Reynolds**

Successful candidate for the 1996 Townsville plebiscite for the state electorate of Townsville and Member for the state electorate of Townsville since 1998.

**Robyn Lorraine Twell**

Successful candidate for the 1993 preselections for the Brisbane City Council ward of East Brisbane and councillor for that ward from March 1994 until March 1997.

**Craig Andrew Wallace**

Working associate of Lee Bermingham on Anthony Mooney's campaign for the Mundingburra by-election.



## EVENTS THAT GAVE RISE TO THE SHEPHERDSON INQUIRY

This Inquiry was triggered when a member of the Queensland Branch of the Australian Labor Party (ALP), Karen Lynn Ehrmann, alleged publicly that widespread electoral fraud in internal Party ballots was being carried out in Queensland by Party members.

At the time of making this claim, Ehrmann had just pleaded guilty to 47 charges relating to the forgery and uttering of electoral enrolment forms. At her sentencing in the Townsville District Court, in August 2000, she described herself as merely a ‘bit player’ in a ‘well-known scheme’ carried out by the Australian Workers Union faction within the ALP to commit electoral fraud in Queensland.

Ehrmann’s conviction followed those of fellow Party members Andrew James Kehoe and Shane John Foster for similar conduct. The activities of these three people were regarded as very serious because they involved tampering with the Australian Electoral Roll — a public document on which the community is entitled to rely because it is vital to our system of democracy.

Their activities also gave cause for concern that more than just the conduct of internal Party plebiscites or preselections was at stake; the integrity of public elections was at risk.

The Criminal Justice Commission (CJC) immediately began investigating the matter. Acting on the advice of Mr P D McMurdo, QC, the CJC considered its preliminary investigation had uncovered sufficient grounds for disquiet to justify the launch of a full independent inquiry. On 5 September 2000, the CJC engaged me to conduct the investigation. From 3 October 2000 to 19 January 2001, public hearings were conducted relating to the terms of reference summarised below. (See chapter 1 for the full wording.)

## THE INQUIRY’S TERMS OF REFERENCE

The Inquiry set out to investigate any alleged official misconduct affecting the electoral roll relevant to the conduct of the:

- 1996 ALP plebiscite for the state seat of Townsville
- 1996 by-election for the state seat of Mundingburra
- 1993 ALP plebiscite for the ward of East Brisbane
- 1993 ALP plebiscite for the ward of Morningside
- 1986 ALP plebiscite for the state seat of South Brisbane.

(With the exception of the Mundingburra by-election, all of these were preselections to determine candidates for public elections.) The 1986 plebiscite for the state seat of South Brisbane was a term of reference added after the Inquiry began hearings and after receipt of further information.

In addition, the Inquiry sought evidence of electoral fraud in the conduct of *any* ALP plebiscite (state or local government) within the years 1993 to 1997 inclusive, and examined specific information received by the CJC implicating the then Deputy Premier, James Peter Elder.

## ROLE OF THE CJC

The CJC has the responsibility of investigating matters that may involve official misconduct by anyone who holds office in a unit of public administration in Queensland. State politicians and local government councillors are such office holders. The CJC also has responsibility for investigating any action that may be intended to influence public sector officials improperly.

## WHAT THE INQUIRY COULD AND COULD NOT DO

The purpose of this Inquiry was not to determine guilt. Rather, it was to gather information regarding the allegations made that fell within the terms of reference. It then had to decide whether any of this information contained admissible evidence — that is, evidence that should be referred by the CJC to a prosecuting authority for consideration of charges against any particular people. The rule of thumb used in making this decision was whether the evidence *could* result in a conviction. In other words, if there was no possibility of a conviction, then no recommendation was made.

Owing to time limitations for prosecution of offences committed under the relevant legislation, only a few matters could be considered for prosecution. (See also page 172.)

Because the CJ Act does not give the CJC jurisdiction to investigate electoral fraud generally, the terms of reference did not call for the making of formal recommendations for electoral reform. However, chapter 10 makes several suggestions for remedying perceived weaknesses in the Australian electoral system and in ALP internal procedures exposed by the Inquiry.

### Why did most of the evidence relate to the ALP?

One of the rules governing eligibility for voting in an ALP preselection is that the voter must be enrolled on the electoral roll for the electorate in which the preselection is being conducted. The conduct of Ehrmann, Foster and Kehoe had shown that by falsifying electoral enrolment forms in order to bolster the chances of specific candidates for preselection, the integrity of the electoral roll was compromised and electoral officials had been deceived into altering the roll.

Such internal rules do not apply to the other political parties. However, some of the evidence in relation to the Mundingburra by-election (a public election as opposed to an internal Party election) did point to the possibility of a false electoral enrolment by one Liberal Party supporter (see page 92).

## TYPES OF ALLEGATIONS

The allegations examined during the course of this Inquiry related to two main categories of false enrolment:

- 1 **forgery:** where people, without their consent or knowledge, were enrolled at a particular address in an electorate where they did not live to enable a vote in their names to be made at a plebiscite in that electorate
- 2 **consensual false enrolment:** where people participated in being falsely enrolled for that purpose with full knowledge and consent.

The first category is more serious and also the more difficult to prove. However, if discovered it is not subject to any time limitation for prosecution.

The second category is less serious and often easier to establish. However, the time limitations for prosecution of this offence (and the fact that it usually takes considerable time for the conduct to be revealed) mean that prosecution action may no longer be possible. The perpetrators are rarely caught, which, in turn, encourages the behaviour to continue. It was this sort of activity that was found during the Inquiry to be far more extensive than identifiable forgery.

## OTHER ALLEGATIONS

As well as the allegations examined by the public hearing, many more were made directly to the CJC. On investigation many of these were found to be without foundation or were clearly out of time for any prosecution action or did not fall within the jurisdiction of the CJC to investigate in that:

- they did not relate to state politicians or local government councillors, or
- they related to federal elections or plebiscites, or
- they related to purely internal ALP processes that did not have any connection with the electoral roll.

Matters that were outside the CJC's jurisdiction, that were not subject to any time limitation and related to federal matters were forwarded to the Australian Electoral Commission and the Australian Federal Police.

Some allegations that were out of time to prosecute were forwarded to the Australian Electoral Commission and the Electoral Commission Queensland to assist those bodies in the detection and prevention of official misconduct including criminal offences.

## WHAT THE INQUIRY REVEALED IN GENERAL

The information gathered during the Inquiry clearly established that the practice of making consensual false enrolments to bolster the chances of specific candidates in preselections was regarded by some Party members as a legitimate campaign tactic. No evidence, however, was revealed indicating that the tactic had been generally used to influence the outcome of public elections. Where it was found to have been used in public elections, the practice appeared to be opportunistic or related to the family circumstances of particular candidates rather than systemic or widespread.

Nor was there any evidence found confirming Ehrmann's allegation that the ALP had a 'mole' inside the Australian Electoral Commission who helped Party members produce false proof of electoral address. (See page 37.)

The Inquiry uncovered evidence of forgery, but there was great difficulty in obtaining evidence to establish who was responsible.

## SPECIFIC ALLEGATIONS

### **The 1996 Townsville plebiscite (see chapter 3)**

During the public hearings, Andrew Kehoe, already convicted of forging enrolment applications for the 1996 Townsville plebiscite, implicated Anthony Mooney (one of the candidates in the Townsville plebiscite) by saying that Mooney had encouraged him to make the false and fraudulent enrolments.

Despite inconsistencies in Kehoe's testimony, his evidence implicating Mooney is sufficient for the CJC to refer the matter to the Commonwealth Director of Public Prosecutions to consider whether to bring forgery charges against Mooney.

Insufficient evidence was found to warrant recommending that the Commonwealth Director of Public Prosecutions consider a charge against any other person (Kehoe, Ehrmann and Foster had already been dealt with).

### **The 1996 Mundingburra by-election (see chapter 4)**

The allegations made by Ehrmann concerning this by-election involved the possibility of false enrolments by members of the ALP for the purpose of a public election rather than an internal Party preselection. However, CJC investigations, with the help of the Electoral Commission Queensland, revealed no evidence to suggest widespread use of fraudulent enrolments. This is consistent with the overwhelming evidence that

almost all false enrolments were for the purposes of internal Party politics and not for the purposes of local government or parliamentary elections.

Importantly, the Inquiry found no evidence of ‘cemetery voting’ — i.e. the tactic of voting using the names of dead people.

In relation to the few cases of possible false enrolments, the time limitation for prosecution has expired.

### **The 1993 East Brisbane plebiscite (see chapter 5)**

The two candidates for the 1993 preselection for the ward of East Brisbane were Robyn Twell and Kerry Rea. When Twell won, Rea lodged a dispute with the ALP Disputes Tribunal, but her appeal was dismissed.

At the Inquiry, Rea said that in 1993 she had been told that members of the AWU faction had been involved in electoral fraud by boosting their numbers for the plebiscite.

Twell said her campaign had been directed by Lee Bermingham, with Warwick Powell also involved.

The then Assistant State Secretary of the ALP, Lindesay Jones, told the Inquiry that at the time he expressed concern to the then Secretary of the ALP, Michael Kaiser, that the plebiscite list for East Brisbane looked ‘very dodgy’.

At an in-camera hearing and later in the public hearing, Bermingham admitted that he had been involved in falsely enrolling members for the plebiscite and implicated a number of other people including Kaiser. He did not implicate Twell.

Powell also admitted that he was involved in arranging false enrolments for the 1993 plebiscite. He said he spoke to a number of people who then either moved physically to, or falsely enrolled in, the East Brisbane ward.

Kaiser denied involvement in any such activity.

According to evidence given by Jones, he and Kaiser (who were in opposing factions) discussed names on a plebiscite list to which Jones had objected and they agreed that about 21 names be removed from that list. Kaiser said in evidence that he and Jones did agree to remove a large number of names all of whom would have voted for Twell.

While the evidence before the Inquiry suggested that consensual false enrolments were indeed made by various people involved in this plebiscite, the expiration of the time limitation for prosecuting offenders means that these matters cannot now be referred to the Commonwealth Director of Public Prosecutions.

Three enrolments indicated the possibility of forgery. However, there is insufficient evidence to establish whether forgery actually occurred or who was responsible.

Allegations that threats were made by Powell and Bermingham to force young Party members to assist them in electoral skulduggery were too general to be the basis of any criminal charges. However, evidence was given that Bermingham and Powell may have used their positions either in the public service or the ALP to offer incentives of employment to young Party members. Some young Party members spoke of these perceived incentives being offered in return for involvement in false enrolments. Both Powell and Bermingham denied having offered incentives.

### **The 1993 Morningside plebiscite (see chapter 6)**

After the CJC reviewed a document that appeared to cast suspicion on the conduct of the Morningside plebiscite, evidence was given by the candidates, Sharon Humphreys and Linda Holliday. They confirmed that Holliday (the unsuccessful candidate) had appealed against the outcome of the plebiscite; however, both also confirmed that the matter of dispute was quite unrelated to electoral fraud.

No other evidence came to light suggesting that the Morningside plebiscite had been infected with electoral malpractice, as had apparently occurred in the 1993 East Brisbane plebiscite.

### **The 1986 South Brisbane plebiscite (see chapter 7)**

*Note: In early 1986, Queensland and the Commonwealth kept separate electoral rolls. As these allegations relate to the Queensland Electoral Roll, Queensland criminal law applies in this case.*

The original terms of reference were further extended when information was received that a number of electoral enrolments for the 1986 plebiscite in South Brisbane were false. Two of the enrolments related to two Members of the Legislative Assembly — Michael Hans Kaiser and Paul Thomas Lucas. The former resigned as the Member for Woodridge shortly afterwards; the latter is still an MLA.

David Barbagallo, who at the time of the plebiscite was Secretary of the East Brisbane branch of the ALP, admitted to the Inquiry that he organised a scheme to enrol people in the South Brisbane electorate for the purposes of the 1986 plebiscite. He admitted that, as part of his scheme, some people (associated with the AWU faction) with their knowledge and consent, were falsely enrolled at an address in the South Brisbane electorate.

#### ***Enrolment of Michael Kaiser***

In 1986 Michael Kaiser was a young member of the Party. He admitted to the Inquiry that he signed an electoral enrolment form dated 7 January 1986 enrolling him at 11 Seventh Avenue, Coorparoo, even though he never lived there. He resigned as the Member for Woodridge immediately after making this admission. However, as the time limitation for prosecuting a false enrolment offence had passed no recommendation to the Queensland Director of Public Prosecutions could be made.

Charges of conspiracy under the Criminal Code of Queensland are not subject to a time limit for prosecution. However, given the time lapse and the fact that Kaiser could not be prosecuted for an offence of false enrolment, it was considered that a Court would determine it to be unfair to bring a charge of conspiracy to commit the offence of false enrolment against Kaiser.

The evidence Kaiser gave concerning the 1986 enrolment conflicted with evidence he had earlier given the Inquiry that he had never been involved in false enrolments. For reasons explained in the report, it was decided not to recommend the matter be referred to the Queensland Director of Public Prosecutions for consideration of perjury charges.

#### ***Enrolment of Paul Lucas***

Paul Lucas acknowledged he signed an electoral enrolment form dated 14 January 1986 that gave his address as 11 Seventh Avenue, Coorparoo, a place at which he said he then lived. At the time, Sharon Cowden, whom he married in 1990, lived at this address. Despite some inconsistencies surrounding his evidence to the Inquiry, it was considered the evidence did not prove a false enrolment.

#### ***Recommendations that forgery charges against Barbagallo be considered***

While admitting organising consensual false enrolments, David Barbagallo did not admit forging electoral enrolment forms in the names of four people — Brown, Heeremans, Kynaston and Crowley.

It is considered that the admissible evidence was sufficient to recommend that the matter be referred to the Queensland Director of Public Prosecutions for consideration as to whether Barbagallo should be charged with forgery of all or any of these four application forms.

For similar reasons as related to Kaiser, it is not recommended that consideration be given to any conspiracy charge.

## **Various plebiscites (see chapter 8)**

### **• 1997 plebiscite for the state seat of Springwood**

A Party member, John Ronchi, gave evidence to the Inquiry that a number of consensual false enrolments were made by various people in relation to the Springwood plebiscite. One of these people was the successful candidate Grant Musgrove (who later went on to win the seat of Springwood).

Under examination at the Inquiry, Grant Musgrove acknowledged that he had 'probably' engaged in falsely enrolling people (with their consent) and added that 'certainly there was a culture in the Party of those sort of things happening'. Musgrove later resigned from the Party. Evidence also showed that other people may have been involved in false enrolments for this plebiscite.

Given the time limitation for prosecution, none of these matters can be referred to the State or Commonwealth Director of Public Prosecutions.

### **• 1996 plebiscite for the Brisbane City Council ward of East Brisbane**

There is clear evidence that there were a large number of false enrolments for the purpose of inflating numbers for the factions which were supporting the candidates. Most were consensual. On their own admissions, Powell, Bermingham, Dennis Mullins and Joseph Felice played a major role in these false enrolments. Of these men, Mullins supported the Labor Unity faction and the other three the AWU faction. However, the time has long since expired for prosecuting them or anyone who assisted them.

Both Powell and Bermingham implicated Michael Kaiser in organising consensual false enrolments. Powell also implicated Gary Fenlon, the current Member for Greenslopes. Bermingham said that he told Powell to consult Fenlon about suitable addresses for consensual false enrolments. Fenlon and Kaiser denied any improper involvement.

In relation to possible forged false enrolments, if forgery did indeed occur the evidence was not capable of establishing who was responsible.

It is interesting to note that the evidence relating to this plebiscite reveals that the practice of enrolling people at addresses at which they did not live for the purposes of a plebiscite extended beyond any particular ALP faction.

### **• State seat of Redlands**

The CJC received information that the three stepsons of John Budd (Member for Redlands from 1992 to 1995) were falsely enrolled in the electorate of Redlands in 1994 and 1995.

While the motive of the three young men was nothing more sinister than to show support for their stepfather, the reality was that the enrolments enabled them to vote in public elections where they had no lawful entitlement to vote. The case is an interesting one because in her testimony to the Inquiry, John Budd's wife, Joan Budd (who had been the General Returning Officer of the ALP for 12 years) claimed that the practice of families of candidates supporting the candidate in this way was commonplace in the ALP and all parties and said she could see nothing wrong with it.

In examining this matter, no evidence of forgery came to light, and, once again, because of the time limitation on prosecuting consensual false enrolments, no charges could be recommended.

## **The Elder Family enrolments (see chapter 9)**

The Inquiry's original terms of reference were extended when information was received that Deputy Premier James Elder may have been directly involved in the practice of consensual false enrolments. Elder resigned as Deputy Premier after admitting his involvement to the Inquiry.

According to Elder, for years various members of his 'close' family had been showing him support by filling out false enrolment forms, which were then lodged with the relevant electoral commission. He said the main purpose of this was to assist him with internal Party conferences and other ballots. However, a by-product of the activity was that his family members were also enabled to vote at local, state and federal elections in electorates or wards in which they had no lawful entitlement to vote. While describing the activity as 'silly', 'foolish' and 'reckless', he said he was not aware of it being a common practice within the Party.

Once again, owing to the time limitation for prosecuting consensual false enrolments, no charges can be recommended to either Director of Public Prosecutions. There was no evidence suggesting that any of the false enrolments was also a forgery.

## COMMENTS REGARDING ELECTORAL REFORM

It is true that the passage of time has made many of the activities uncovered by this investigation beyond the reach of the criminal law. However, their exposure to the public gaze through this Inquiry has had an important benefit. Governments (State and Federal), as well as the public, are now better informed of what has been going on and, therefore, are in a better position to remedy any perceived weaknesses in the present electoral system that have been exposed by the Inquiry. These weaknesses focus on the electoral enrolment and electoral voting procedures touching especially on preselections.

Some of the measures to which it is suggested consideration be given include:

- better procedures for identifying people when they initially apply for enrolment and when they apply to change enrolment (see page 167)
- better procedures for establishing proof of residency when a person applies for enrolment in a particular electorate (see page 167)

Such reforms may or may not prove practicable and effective. In addition, other measures may be required. These include:

- ongoing vigilance of the rules governing plebiscites and the application to plebiscites of sanctions under the criminal law (see page 168)
- legislation requiring preselection processes of all political parties to be transparent and fair (see page 168)
- supervision of plebiscites by the Electoral Commission of Queensland to ensure such transparency and fairness occurs (see page 168)
- a change to the law that would make consensual false enrolments and other electoral offences indictable offences and therefore not subject to a time limitation for prosecution or, if there is to be a time limitation, increasing that time (see page 172)
- revision and tightening of the electoral laws operating in Queensland, including increased penalties for transgressing these laws (see page 175)
- codes of conduct for MLAs and local government councillors (see page 175)
- a change to the law to introduce the doctrine of electoral agency to make candidates accountable for any illegal conduct of their electoral agents, i.e. campaign managers, and to provide sanctions under the criminal law (see page 178).

## INTRODUCTION

### EVENTS LEADING TO THIS INQUIRY

On 11 August 2000 in the District Court at Townsville, Karen Lynn Ehrmann pleaded guilty to:

- (a) 24 charges of forging a document, namely, an electoral enrolment claim form, deliverable to a public authority under the Commonwealth, namely, the Australian Electoral Commission; and
- (b) 23 charges of uttering, knowing it to be forged, a document, namely, an electoral enrolment form, deliverable to a public authority under the Commonwealth, namely, the Australian Electoral Commission.

On the same day she was sentenced to three years' imprisonment with parole recommended after serving nine months.

The offences charged were brought under section 67(b) of the *Crimes Act 1914* (as amended) of the Commonwealth. The indictment, which had been presented to the District Court in December 1998, had contained 62 charges — the Crown withdrew 15 of these charges.

The offences were committed between 1993 and 1996 (both years inclusive) and involved enrolment claim forms for 19 different persons. All the offences were committed in Townsville. The committal proceedings leading to presentation of the indictment had been conducted on 26, 27 and 28 October 1998 after Ehrmann had been charged on complaint with the offences.

At the sentencing proceedings on 11 August 2000, Ehrmann, who was legally represented, relied on an affidavit, which she had sworn on 10 August 2000. In that affidavit Ms Ehrmann had sworn:

I'm pleading guilty to charges but I am in no way the instigator of a grand scheme. I was a bit player in a well-known scheme being carried out by the AWU long before I was involved. I was not a person with any power or great position ... enrolment forms were only used for internal ballots. These people did not vote in general, local, state or federal elections. When I was asked to take part in a situation in the Mundingburra by-election where people voted using forged enrolments I refused. These enrolments did not give me any real advantage in any plebiscite. I won outright without them. In all plebiscites I stood I topped the poll. The only advantage was to the AWU. The extra votes were used to elect other candidates.

The reference to the AWU, of which Ehrmann was a member, was a reference to the Australian Workers Union faction within the Australian Labor Party, Queensland Branch (ALP).

Following Ehrmann's conviction, the Criminal Justice Commission (CJC), on and from 15 August 2000, operated, of its own initiative, in conducting preliminary investigations of Ehrmann's allegations. These investigations included sending a team of investigators to Townsville to interview Ehrmann and a number of other persons.

In the meantime the CJC received further complaints alleging the involvement or possible involvement of members of the ALP, including elected representatives, in electoral fraud. The CJC received requests calling for a full independent inquiry.



The CJC's preliminary investigations ascertained that, apart from Karen Ehrmann, two other persons were convicted in Townsville courts after they had pleaded guilty to offences committed under the *Commonwealth Electoral Act 1918* (as amended) (CE Act) and the Crimes Act. They are Andrew James Kehoe and Shane John Foster.

On 24 July 1997, Kehoe pleaded guilty in the Magistrates Court of Townsville to 10 charges of offences under section 344(1) of the CE Act, namely, forging electoral enrolment forms. All offences were committed at Townsville in 1996. The sentencing Magistrate, Ms Bradley, said the offences:

... could have had very serious consequences both in terms of the outcome of an election or pre-selection and in terms of the ability of people to exercise their right to vote. It was a blatant attempt on your behalf to interfere with the basic foundation of a democratic society and that is that we have a fair and just voting system as reflected by an accurate electoral roll. There could have been a very serious consequence of your action that people could have been denied the right to vote. That is a very serious matter.

Kehoe was convicted and sentenced to three months' imprisonment to be suspended forthwith upon his entering into a recognisance in the sum of \$1000 to be of good behaviour for the next two years.

Foster was sentenced on 17 March 1999 after pleading guilty in the District Court at Townsville to 11 charges of forging an electoral enrolment claim form and 11 charges of uttering an electoral enrolment claim form. All charges were brought under section 67(b) of the Crimes Act. These were collectively described by the sentencing judge, His Honour Judge Shanahan, Chief Judge of the District Courts, as involving tampering with the Australian Electoral Roll. He was sentenced to imprisonment for three months to be released forthwith upon giving security by recognisance in the sum of \$500 on each count on condition that he be of good behaviour for a period of five years. Foster cooperated with the prosecution and undertook to give evidence against Ehrmann should she go to trial.

It is fair to say that on the evidence Foster and Ehrmann committed some or all of their unlawful acts by way of assistance to each other.

Townsville was the focal area of all this illegal conduct by Ehrmann, Foster and Kehoe. Their conduct concerned enrolments under the CE Act, but the claim made by Ehrmann at the time she was sentenced was that conduct of that type extended beyond Townsville and was, in effect, common throughout Queensland.

The evidence showed that each of Ehrmann, Foster and Kehoe had been, at all material times, members of the ALP. At the times when Kehoe and Foster committed their respective offences each was a person who did not hold any full-time public office. Kehoe had been a service station proprietor and Foster a finance officer. Each had been an ardent supporter of the ALP.

Ehrmann had been a councillor of the Townsville City Council and Foster had been a part-time councillor of the same Council.

The offences committed by these three persons were very serious indeed, affecting as they did the correctness of electoral records — public records — on which members of the community rely and are entitled to rely when voting at elections for members of Federal and State Governments and for members of local authorities as well as any referendums that might be conducted. There should be no doubt about the accuracy of electoral records.

It is worth recording here that Ehrmann applied to the Queensland Court of Appeal for leave to appeal against the severity of her sentence. On 21 February 2001 her application was heard and refused. The judgments of the members of the Court included the following statements:

THE PRESIDENT: The learned Trial Judge ... rightly noted the seriousness of the crimes which interfere with the integrity of the electoral roll and affect the confidence of the public and the democratic process. Such conduct increases public cynicism towards those who are involved in politics. A reliable electoral roll and public confidence in it are matters fundamental to an effective democracy.

THOMAS J A: Ms Ehrmann engaged in a form of political cheating designed to obtain personal advantage for herself and her political allies ... In a case such as this I consider deterrence to be a very important factor. The crime is not victimless ... Public morality, the democratic process and the public at large are the victims of such distortions. I do not think that the Courts can send a signal that the electoral system may be polluted by forgery as it was here, without serious punishment.

I should at this stage say that these same electoral rolls and their correctness were and are relied on in the rules of the ALP. This reliance occurred when the Queensland Branch or members of local branches forming part of the Queensland Branch voted, in accordance with the internal procedures of the ALP, with a view to choosing a candidate to represent the ALP at an election or by-election or to select delegates from local branches or local areas to attend state conferences of the ALP. These elections were described as preselections or plebiscites.

By their actions Ehrmann, Foster and Kehoe fraudulently represented to the Australian Electoral Commission that certain persons named on the electoral enrolment applications for a particular electoral district were indeed lawfully entitled to be enrolled on the electoral roll for that district. The essence of the fraudulent representation was that at material and relevant times certain persons in fact resided or lived at an address within the electorate and had done so for the relevant period prescribed by the relevant electoral acts and were therefore eligible to cast a vote in that electorate.

On 22 August 2000, the CJC sought from Mr McMurdo, QC, advice on the following questions:

- (i) Whether a reasonable suspicion of official misconduct existed in respect of the allegations made by Ehrmann in her affidavit sworn 10 August 2000 which allegations are set out above.
- (ii) The nature of the investigation of any such suspected official misconduct that the CJC should conduct.
- (iii) Whether having regard to section 90 of the *Criminal Justice Act 1989* (CJ Act) an open hearing should be held for the purpose of such investigation.
- (iv) The terms of reference of any such open hearing.

Mr McMurdo furnished a Memorandum of Advice dated 5 September 2000 addressing these issues. He was of the view that a reasonable suspicion of official misconduct was raised by certain of the allegations and that further enquiries should be focused on these matters. The focus of the enquiries he set out in terms of reference for an investigation.

## THE TERMS OF REFERENCE

On 5 September 2000 the CJC resolved to act on the advice and, after obtaining the support of the Parliamentary Criminal Justice Committee (PCJC), acting pursuant to section 25(2)(f) and section 25(3) of the CJ Act, appointed me as an independent legal practitioner to conduct a hearing. I note section 25(4) of the CJ Act, which provides that: 'A person authorised to conduct a hearing under subsection (2) is taken, for the purposes of the hearing, to be the Commission'.

On 6 September 2000 the CJC engaged Mr R V Hanson, QC, as Senior Counsel Assisting the Inquiry.

The terms of reference drafted by Mr McMurdo were adopted by the CJC to focus the investigation. These terms of reference were:

1. To conduct an investigation into any alleged official misconduct, by way of conduct which constitutes or could constitute a criminal offence or offences:
  - (a) affecting the electoral roll relevant to the conduct in 1996 of a plebiscite within the Australian Labor Party to select its candidate for the state electorate of Townsville;
  - (b) affecting the electoral roll for the by-election for the state seat of Mundingburra held in 1996;

- (c) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor Party to select its candidate for the Brisbane City Council ward of East Brisbane;
- (d) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor Party to select its candidate for the Brisbane City Council ward of Morningside;
- 2. To conduct an investigation into such other alleged conduct, which constitutes or could constitute a criminal offence, in respect of any plebiscite conducted within the years 1993 to 1997 inclusive for the selection of the candidate of the Australian Labor Party for any electorate of the Legislative Assembly or the position of councillor of any local government within Queensland, in respect of which there could be a reasonable suspicion of official misconduct;
- 3. To undertake such preliminary investigations as are appropriate to determine whether there is a reasonable suspicion of official misconduct in relation to anything which constitutes or could constitute a criminal offence, in respect of any plebiscite conducted within the years 1993 to 1997 inclusive and as otherwise describe in paragraph 2 above.

In the course of my investigation, further information was received that could not be investigated under the original terms of reference drafted by Mr McMurdo and adopted by the CJC. To permit investigation of this further information, the terms of reference were on two occasions extended by the CJC on my and Mr Hanson's recommendation after once again having obtained the support of the PCJC.

The first extension was made on 27 November 2000 when the CJC resolved to amend the above terms of reference by inserting after paragraph 3 the following paragraph:

- 3A. To conduct an investigation into any alleged official misconduct, which constitutes or could constitute a criminal offence or offences, by James Peter Elder in respect of matters affecting the electoral roll.

The second extension occurred on 19 December 2000 when the CJC resolved to extend the terms of reference by inserting after subparagraph 1(d) the following subparagraph:

- (e) affecting the electoral roll relevant to the conduct in 1986 of a plebiscite within the Australian Labor Party to select its candidate for the state electorate of South Brisbane.

## JURISDICTION OF THE CRIMINAL JUSTICE COMMISSION

In the course of Mr McMurdo's advice he canvassed the issue of the jurisdiction of the CJC to investigate the allegations of electoral fraud.

I have considered Mr McMurdo's advice and share his views. I do not intend canvassing the same matters again; however, I will set out relevant paragraphs of his advice, from which I have omitted references to footnotes appearing in his advice:

- 4. The commission has responsibilities and powers to investigate 'official misconduct', as to both its incidence generally in the State, and in particular cases of alleged or suspected official misconduct.
- 5. In Queensland, there is no criminal offence of official misconduct, so called. In some cases, the outcome of the commission's investigation is a disciplinary charge of official misconduct, which is dealt with under the *Misconduct Tribunals Act 1997*.  
  
The evident intent of the Act, so far as the commission's investigative responsibilities and powers are concerned, is to provide a regime whereby matters of public concern, potentially involving the neglect of, or abuse of the powers or the authority of public officials, can be investigated in a way which is not facilitated by other processes and institutions.
- 6. Official misconduct for the purposes of the Act is defined by ss. 31 and 32. By s. 31 (1), official misconduct is conduct of the general nature prescribed by s. 32, or a conspiracy or attempt to engage in such conduct.
- 7. Section 32(1) provides that official misconduct is conduct of a kind described in paragraphs (a), (b) or (c) of that subsection, if that conduct also '... constitutes or could constitute —

- (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration — a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
  - (e) in the case of any other person — a criminal offence.'
8. It is convenient to discuss first the terms of paragraph (d). In the present cases, the potentially relevant units of public administration are the Legislative Assembly and one or more local governments within Queensland. Section 7 of the *Legislative Assembly Acts 1867–1978* provides that the seat of a Member of the Legislative Assembly becomes vacant in certain circumstances but does not provide for any disciplinary regime for the 'termination of the person's services'. Section 7B provides that in the circumstances there set out, the Assembly may resolve that the person should not continue as a Member of the Assembly and that the seat of that person shall become vacant. But circumstances which might engage s. 7B do not arise here. There is no relevant disciplinary standard or norm of conduct, nor is there any provision for the disciplining of a Member under some regime which might terminate the member's services.
  9. The *Local Government Act 1993* provides for the disqualification and vacation of office of a councillor in certain circumstances as set out in s. 221, or (by s. 222) if a person is found guilty of certain offences against that Act. Again, there is no prescribed disciplinary standard or disciplinary regime.
  10. Accordingly, in the case of conduct of either a Member of the Legislative Assembly or a councillor, there must be conduct which constitutes or could constitute a criminal offence, for paragraph (d) to be satisfied, as there must be for paragraph (e) cases.
- ...
14. If the conduct complained of would constitute a criminal offence, then it is official misconduct if it is of the types described in paragraphs (a), (b) or (c) of s. 32(1). They are as follows:
    - 32 (1) Official misconduct is —
    - (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
    - (b) conduct of a person while the person holds or held an appointment in a unit of public administration —
      - (i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or
      - (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or
    - (c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;''
  15. I shall return to the type of conduct within paragraph (a) but it is convenient to go first to paragraph (b). Read alone, it refers to conduct "of a person while the person holds or held an appointment in a unit of public administration". In turn, the conduct referred to in subparagraphs (i) or (ii) seems to be referable only to conduct of a person who, at the time of the alleged misconduct, held a relevant appointment.
  16. Section 31(3) provides that:
 

"(3) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment in a unit of public administration may be official misconduct, if the person becomes the holder of such an appointment."

It could be suggested that this might enlarge the scope of s. 32(1)(b). It is only by reference to the holding of an appointment, at the relevant time, that an assessment could be made as to whether the conduct described in paragraph (b) was conduct which fell short of what was required. To be official misconduct within s. 32(1)(b), the conduct must be that of a person then holding an appointment in a unit of public administration.

17. That is not to say that *any* criminal conduct of a person who, coincidentally, holds such an appointment, is official misconduct. There must be a relevant and sufficient connection between the conduct concerned and the appointment held. In particular, not all misconduct by a person who also holds an appointment in a unit of public administration, will necessarily constitute or involve “a breach of the trust placed in the person by reason of his or her holding the appointment”.
18. Paragraph (c) is concerned with misconduct by the misuse of information or material, but it must be information or material which the person has acquired in or in connection with the discharge of his or her functions or the exercise of his or her powers or authority as the holder of an appointment.
19. Accordingly, paragraphs (b) and (c) are concerned with the conduct of a person then holding an appointment in a unit of public administration.
20. However paragraph (a) is expressed to refer to the conduct of a person “whether or not the person holds an appointment in a unit of public administration”. A comparison of paragraphs (d) and (e) again reveals that, in certain circumstances, the conduct of a person who is not the present or former holder of an appointment might nevertheless be official misconduct.
21. Consequently, the conduct of a person who is not the prospective, present or former holder of an appointment might be official misconduct if it is of the kind referred to in s. 32(1)(a), and constitutes or could constitute a criminal offence. The result is that official misconduct is given a broader meaning than what might be considered its ordinary meaning.
22. Within s. 32(1)(a), there is a requirement for a relevant and sufficient nexus between the misconduct and the discharge of functions or exercise of powers or authority of a unit of public administration or of a person holding an appointment in such a unit. The relevant conduct must adversely affect, or be such that it could adversely affect, directly or indirectly, the honest and impartial discharge of such functions or the exercise of such powers or authority. The effect need only be a potential adverse effect, directly or indirectly.
23. Although s. 31(3) does not affect s. 32(1)(b), it is relevant to s. 32(1)(a). Especially when regard is had to this provision, it appears that conduct, engaged in before a person becomes the holder of an appointment, might be within s. 32(1)(a) if it has a sufficient potential to adversely affect the honest and impartial performance of a person once that person becomes the holder of an appointment.
24. It is not the responsibility of the commission to investigate all misconduct, even criminal conduct, within a political party or any other organisation which is not a unit of public administration. The commission’s role exists where that conduct has at least the potential to affect units of public administration or the performance of the functions of those who hold office in them.
25. ... Having regard to s. 32(1)(a), (d) and (e), conduct outside the purported discharge of the member’s or councillor’s functions can be official misconduct, as, by definition, it is when it is the conduct of someone other than the Member or councillor. In such cases, consideration of whether that person’s criminal conduct might affect, or have affected, the member’s honesty or impartiality will usually require an examination of the particular facts and circumstances.

#### ***Investigation of official misconduct***

26. The commission is established as a body to, amongst other things, investigate complaints of official misconduct referred to it and to secure taking of appropriate action in respect of official misconduct. Section 23 provides that the responsibilities of the commission include:
  - ...
  - (f) in discharge of such functions in the administration of criminal justice as, in the commission’s opinion, are not appropriate to be discharged, or can not be effectively discharged, by the police service or other agencies of the State, undertaking —
    - ...
    - (iii) investigation of official misconduct in units of public administration
 Then follows s. 25 which authorises the commission to conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities.
27. Within the commission, there is established the official misconduct division, which “is the investigative unit within the commission” and it is the function of this division, subject to directions or orders of the commission:
  - (a) to investigate the incidence of official misconduct generally in the State; and

...

(d) to investigate cases of –

- (i) alleged or suspected misconduct by members of the police service; or
- (ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration;

that come to its notice from any source, including by complaint or an anonymous source; ...

- 28 So the commission has a responsibility to investigate official misconduct “in” units of public administration, and a power to conduct a hearing in relation to such an investigation. The official misconduct division is empowered to investigate the incidence of official misconduct generally in the State, but in relation to specific cases of suggested misconduct, it is given the function of the investigation of “alleged or suspected official misconduct by persons holding appointments in ... units of public administration”. As discussed earlier, the terms of s. 32 could result in conduct engaged in by a person who is not a prospective, present or former holder of an appointment being nevertheless official misconduct, if it has the necessary connection with the performance of another person who is or becomes a holder of an appointment. It seems unlikely that the investigative function of the official misconduct division was not intended to extend to such cases. Again, it would be remarkable if such conduct was not within the commission’s investigative responsibility expressed within s. 23(f)(iii), or that s. 29 was intended to affect the achievement of an expressed object of the Act, being that the commission investigate complaints of official misconduct referred to it and take appropriate action in respect of official misconduct. There is no apparent reason why the Act would permit the investigation of some but not all official misconduct as defined.

...

32. In cases such as those raised by the present allegations, a reasonable suspicion of official misconduct, by reason of s. 32(1)(a), involves a suspicion both as to the occurrence of criminal conduct and the existence of facts and circumstances by which that conduct might affect the holder of the relevant appointment in the discharge of his or her functions. This requires some consideration of the functions of a Member of the Legislative Assembly or a councillor in a local government.
33. What then are the functions of a Member of the Legislative Assembly? A comprehensive examination of those functions is not required here. Undoubtedly those functions include the participation in parliamentary debate and the advancement of the interests of the member’s constituents, as well as the State generally. Parliament has a critical role as a debating forum, involving the various procedures of general debate, motions of censure, discussions of matters of public importance and the asking of questions. Members are expected to raise matters of public interest both in and out of parliament, as well as to address such issues in the formulation of policy. The fundamental importance of the effectiveness of our electoral laws, including their potential for abuse by conduct such as this conduct, is clearly a matter of proper concern for any Member. Suppose a Member had progressed to that appointment with the known benefit of conduct such as this: could he or she be adversely affected, at least indirectly, in the honest and impartial discharge of his or her functions in respect of such an issue? Indeed the matters raised by constituents for the member’s attention might be the very misconduct of which the Member is aware, or at least like conduct.

At the same time, the Member would know that there is likely to be a continuing problem from the false content of the electoral roll. It seems difficult to see that these would be matters outside the functions of a Member of the Legislative Assembly, i.e. that the Member could ignore them as inevitably quite irrelevant to his or her work. There is a close and real connection between misconduct involving the electoral roll and the functions of an elected Member.

34. The role of a councillor is expansive: see *Local Government Acts*, 229. It involves a representation of the public interest in matters that relate to local government. The conduct alleged by Ehrmann includes the forging of documents to change the content of the electoral roll. This roll determines the eligibility of voters for local government elections. A councillor who knows that the electoral roll relevant to that local government is false in consequence of this type of conduct, could hardly answer his or her constituents by saying that it was none of the councillor’s business. On the contrary, it would be fairly within the functions of the councillor to alert the relevant authorities to the falsity of the electoral roll, for otherwise it could affect the fair and lawful election of councillors.

## A PUBLIC HEARING

Pursuant to section 90 of the CJ Act, a hearing of the CJC is to be closed to the public unless the CJC orders, whether before or during the hearing that it be open to the public. Section 90 subsections (2) and (3) read:

- (2) The commission may order that the hearing be open to the public only if the commission considers —
  - (a) the hearing is of an administrative nature; or
  - (b) a closed hearing would be unfair to a person or contrary to the public interest.
- (3) In considering whether a closed hearing would be unfair to a person or contrary to the public interest the Commission must have regard to —
  - (a) the subject nature of the hearing; and
  - (b) the nature of the evidence expected to be given.

On 3 October 2000, the day on which the Inquiry first sat, and after hearing submissions from Mr Hanson, QC, and from Mr Mulholland, QC, who appeared for the ALP and who supported Mr Hanson's submissions, I ordered that the hearing be open to the public. In doing so I said:

For the reasons which Mr Hanson has advanced ... I'm of the view that having regard to the subject matter of this investigation and the nature of the evidence to be given a closed hearing would be contrary to the public interest. (T10)

Mr Hanson had submitted:

The public, surely, has a keen interest in the integrity of the electoral process and we're all familiar with allegations of electoral fraud in foreign countries and we all assume that we're immune from such practices here. Any suggestion that the electoral process has been unlawfully manipulated surely immediately invokes feelings of outrage in most members of the public and where such allegations are being examined they should be examined in public.

Some reputations will inevitably be damaged and that damage may eventually be shown to have been without justification. But the public interest in a public examination of these important issues must, in my submission, outweigh the considerations of damage and unfairness to other people.

On 3 October 2000 I also said that there could be circumstances in the course of the investigation in which a witness might apply to me to vary the order that the hearing be open to the public.

As it transpired, evidence was taken in public hearings for the duration of the investigation with the exception of the evidence given by Lee Michael Bermingham when on 20 October 2000 he first gave evidence to the Inquiry. As Bermingham had not previously spoken to CJC investigators it was not known in detail what he would say concerning any matter within the terms of reference. Shortly before 20 October Bermingham's solicitors had given to the CJC's investigative officers information which included information about many matters which fell outside the terms of reference. In those circumstances I considered that it would not be in the public interest that those matters be aired publicly at that time.

I should add that at no time during the course of the hearings, except in relation to the initial evidence given by Bermingham, was it submitted by or on behalf of any person that the hearings should not be conducted in public. Indeed, Counsel for the ALP — and the ALP was most likely to be adversely affected by the evidence — submitted that the hearings should be in public.

I should also add that the public hearings resulted in substantial publicity, which generated a significant amount of valuable information being forwarded to the CJC from various sources.

## Public hearing days

The public hearing days commenced on 3 October 2000. The CJC sat for a total of 31 days spread over a three and a half month period terminating on 19 January 2001. One of these days — 20 October — was the day of the closed hearing, the other days were all public hearings.

## Appearances

For all the hearings, Mr Hanson, QC, was Senior Counsel Assisting the CJC and Mr Stephen Lambrides was Junior Counsel Assisting. Mr Robert Mulholland, QC, with Mr David Boddice appeared for the ALP instructed by Carne & Herd, Solicitors. Other appearances by legal representatives are set out in the list of witnesses recorded in attachment 1.

## LOGISTICS OF THE INVESTIGATION

- In all, 84 persons were called and gave evidence in the public hearings.
- Police officers attached to the CJC interviewed most of the witnesses before they gave evidence and also interviewed in excess of 120 further people.
- The hearings produced a total of 3221 pages of transcript, which consisted of 3166 pages of transcript of evidence and 55 pages of oral submissions.
- Exhibits tendered totalled 417. Of these exhibits 403 to 417 (inclusive) consisted of written submissions by or on behalf of various persons including Counsel Assisting.
- Six investigators were engaged for the majority of the investigation in the interviewing of witnesses, the preparation and serving of summonses and notices to produce and associated duties.
- Several support officers were engaged in the course of the investigation in the preparation of transcripts of interviews, summaries of interviews and other voluminous material produced during the investigation.
- Financial analysts and intelligence analysts spent considerable time assessing and analysing information received by the CJC.
- A significant amount of information and documentation was sought and obtained from the ALP through its solicitors. This was provided without the necessity of formal process and in a ready and timely manner.

## PRIVILEGE AGAINST SELF-INCRIMINATION

Section 94(2) of the CJ Act provides that a person in attendance before the commission is not entitled:

- (a) to remain silent with respect to any matter that in the commission's opinion is relevant to the commission's investigation if the commission requires the person to give evidence with respect to that matter;
- (b) to fail to answer a question relating to any such matter that the commission requires the person to answer;
- (c) to fail to produce any record or thing that, in the commission's opinion, is relevant to the commission's investigation, if the commission requires the person to produce it;

on the ground that to comply with the requirement would tend to incriminate the person of an offence.

A person 'in attendance' includes a person summoned to attend to give evidence.

Section 94(2) is designed to enable the CJC to get to the truth of the matter under investigation. A witness giving evidence cannot refuse to answer questions or refuse to produce any record or thing if required by the CJC to answer or produce, but is



protected by section 96(1) of the CJ Act. That section provides that a disclosure made by a witness before the CJC, after he or she has objected to making the disclosure on the ground that it would tend to incriminate the witness, is not admissible as evidence against the witness in civil or criminal proceedings in a court, or in disciplinary proceedings (save for the exceptions prescribed by subsection 96(2) of the CJ Act).

The exceptions to this are set out in section 96(2), which provides that subsection 96(1) does not apply in relation to proceedings in respect of a contempt of the CJC or an offence of perjury.

The decision of the Full Court of the Supreme Court of Queensland in *R v. McDonnell ex parte Attorney-General* [1988] 2 Qd. R.189 is authority for the proposition that a provision such as section 94(2) is not confined to incrimination for offences created by and under the authority of Acts of the Queensland Parliament. That is, a witness before me could not have refused to answer questions put to him or her on the grounds that the answers may have tended to incriminate the witness in the commission of a Commonwealth offence such as under the Crimes Act or the CE Act. (*R v. McDonnell* considered the provisions of section 14(1A) of the *Commissions of Inquiry Act 1950*, which, for all relevant purposes, is the same as section 94(2) of the CJ Act.)

Many witnesses giving evidence before the Inquiry availed themselves of the protection of section 96(1) before answering questions. They were required to answer the questions and therefore the evidence they gave cannot be used against them, subject to the exceptions set out in section 96(2).

## POSSIBLE CHARGES

As Mr McMurdo points out in his advice at paragraphs 4 to 10, there is no disciplinary regime for members of the Legislative Assembly or local authority councillors (each of whom is a holder of an appointment in a unit of public administration), so that those officials cannot be dealt with for a charge of a disciplinary nature of official misconduct. Of course, those who do not hold appointments in a unit of public administration, also, cannot be charged with a charge of a disciplinary nature of official misconduct.

It follows that within the terms of reference the only possible charges against any person are of criminal offences.

There is evidence which is capable of suggesting that there were many instances of false statements being made in applications for enrolment of persons under the *Electoral Act 1992* of the State of Queensland and the CE Act. There were a number of instances of false enrolments of persons under the *Elections Act 1983–85* of Queensland. At the Inquiry hearings it soon became apparent that there were two distinct categories of possible false enrolments. First, those where the claimant whose name is on the enrolment application form had no knowledge that he or she was to be or had been falsely enrolled and, secondly, those where the claimant participated, facilitated or authorised the false enrolment. The evidence suggests that the latter type of conduct was far more prevalent than the former.

In the former category, where the form had been completed and signed without the authority of the elector, forgery was committed. And it was forgery to which Ehrmann, Foster and Kehoe had pleaded guilty and were convicted. When the form was lodged with the relevant authority, an uttering was committed. Whether forgery and/or uttering are charged as an indictable offence or an offence punishable in a court of summary jurisdiction depends on the statute under which the charge is brought.

As Counsel Assisting submitted, the criminal law relevant to these matters is far from simple. This is the result of:

- (i) the interaction of State and Federal jurisdiction;
- (ii) changes at the end of 1991 in the administrative arrangements for the keeping of the electoral rolls; and
- (iii) changes in the Queensland law relating to elections between 1983 and 1993.

Prior to 1 January 1992, the State and the Commonwealth kept separate electoral rolls and the respective laws of the State and the Commonwealth applied to dealings with their own rolls. As from 1 January 1992, a joint roll administered by the Commonwealth has been kept for the Commonwealth and Queensland, with the result that any offences with respect to the roll committed since that time are offences against Commonwealth law. The joint roll is the result of administrative arrangements between the Commonwealth and Queensland sanctioned in so far as Queensland is concerned by the provisions of section 62 of the *Electoral Act 1992* (Qld). In the case of a joint roll, no State offence is open because of the effect of section 109 of the Commonwealth Constitution, which excludes the application of State law where the Commonwealth has legislated to cover the field, as it has here.

I should add that prior to 1 April 1986 electors had to submit two electoral enrolment forms — one for the Commonwealth and one for the State — for the same address. Examples of these forms appear in Exhibits 375 and 376 tendered during investigations into the 1986 South Brisbane plebiscite. Since that time only one form has been required.

As the terms of reference, with one exception, mainly refer to post-1992 events, I will at this stage discuss the relevant Commonwealth laws which may apply to the two categories of conduct, i.e. consensual false enrolments and forgery. When I canvass the term of reference which relates to the 1986 plebiscite for the state seat of South Brisbane I shall again address the relevant state laws predominantly.

Possible charges are:

- (a) Consensual false enrolments
- (b) Imposition under section 29B of the Crimes Act
- (c) Conspiracy
- (d) Forgery and/or uttering
- (e) Perjury

## **Consensual false enrolments**

### ***The Commonwealth Electoral Act 1918***

Where an elector participates in or authorises a false enrolment, there is no forgery. In such event the offence committed is a breach of section 339(1)(k) of the CE Act, which provides that:

(1) A person shall not:

...

(k) make a statement:

- (i) in any claim, application, return or declaration (not being a statement made by the person in the person's nomination paper);

...

under this Act (other than Part XX) or the regulations that, to his or her knowledge, is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

Those who knowingly participate as witness to a false enrolment application may also commit an offence against section 337 and/or section 342 of the CE Act.

Section 337 of the CE Act provides:

(1) A person shall not:

- (a) sign as witness any blank electoral paper; or
- (b) sign as witness any electoral paper which has been wholly or partly filled up unless it has been signed by the person intended to sign it; or

- (c) sign as a witness any electoral paper unless he or she has seen the person, whose signature he or she purports to witness, sign it; or
- (d) write on any electoral paper as his or her own name:
  - (i) the name of another person; or
  - (ii) any name not being his or her own name.

Penalty: \$1,000.

- (2) In this section, **electoral paper** includes a document in a prescribed or approved form or in a form in Schedule 1.

Section 342 provides:

The person witnessing any claim for age 17 enrolment or any claim for enrolment or transfer of enrolment shall, before signing the claim as witness, satisfy himself or herself, by inquiry from the claimant or otherwise, that the statements contained in the claim are true unless he or she knows that the statements contained in the claim are true.

Penalty: \$1,000.

For the purposes of section 337, an electoral enrolment claim form was at all relevant times either a prescribed form or approved form.

Under section 15B of the Crimes Act, a prosecution for offences such as section 339(1)(k), section 337 and section 342 of the CE Act must be commenced within one year after the commission of the offence.

All possible false enrolments relating to the joint roll disclosed by the investigation were completed more than 12 months ago. It follows that in respect of those possible false enrolments falling within the CJC's terms of reference there can now be no prosecutions for possible breaches of the CE Act.

## Imposition

I turn now to section 29B of the Crimes Act which provides:

Any person who imposes or endeavours to impose upon the Commonwealth or any public authority under the Commonwealth by any untrue representation, made in any manner whatsoever, with a view to obtain money or any other benefit or advantage, shall be guilty of an offence.

Penalty: Imprisonment for 2 years.

There are a number of authorities which suggest that on a prosecution of an offence under section 29B of the Crimes Act the Crown is not required to prove that the Commonwealth suffered any further burden or detriment other than the untrue representation. Authorities also suggest that the term 'benefit or advantage' is to be given its natural meaning and not to be limited in its operation. The authoritative decision on section 29B is that of the High Court of Australia in *Bacon v. Salamane* (1965) 112 CLR 85. It is worth noting the charge against the respondent:

At Sydney he did impose upon a public authority under the Commonwealth, to wit the Australian Atomic Energy Commission, by an untrue representation, to wit that his name was Brian Charles MacDonald and that he did not have any criminal convictions, with a view to obtain a benefit.

The learned Chairman of Quarter Sessions found that the respondent had made the representations alleged to the Employment Officer of the Commission, that they were untrue to the respondent's knowledge and that he had made them with a view to obtaining employment with the Commission.

Owen J wrote the leading judgment in the High Court and, at page 92, his Honour said:

The necessary elements of the offence in a case such as the present are (1) that the person charged imposed upon the Commonwealth or upon a public authority

under the Commonwealth by an untrue representation, that is to say untrue to the knowledge of the person charged; and (2) that the representation was made with a view to obtain, that is to say with the object or for the purpose of obtaining, money or some other benefit or advantage. If these facts are proved, the offence is committed.

Other cases on section 29B are *Jacobson v. Piepers ex parte Piepers* (1980) Qd R 448 a decision of the Full Court of the Supreme Court of Queensland and *Guillot v. Hender* (1999) 104 A Crim R 589 a decision of the Full Court of the Federal Court of Australia. Both cases followed *Bacon v. Salamane*.

In my view, when a person participates in a false enrolment in his or her name by signing an enrolment application which he or she knows to be false and which contains an untrue representation that the person resides at a particular address with a view to having the person's name enrolled on an electoral roll showing the person resides at the false address then that person commits an offence under section 29B. The evidence before this Inquiry has disclosed evidence against many witnesses and persons justifying my recommending that the matters in respect of those witnesses and persons be referred to the Commonwealth Director of Public Prosecutions for possible prosecution under section 29B. However, the same evidence has disclosed that those self-same witnesses and persons committed offences under section 339(1)(k) of the CE Act and section 15B of the Crimes Act bars prosecution now for those offences.

The legislation, which imposes different criminal responsibility for the same acts, is most unsatisfactory. I shall later comment further on this aspect.

At the end of the day I have decided not to refer to the Commonwealth Director of Public Prosecutions any of the above matters disclosing offences against section 29B. I do so because of one aspect of the Prosecution Policy of the Commonwealth as set out in guidelines issued by the Commonwealth Director of Public Prosecutions. Paragraph 2.23 of the guidelines seems to preclude any prosecution under section 29B of the Crimes Act solely to avoid a time limit for a prosecution under a specific Act, in this case the CE Act.

Paragraph 2.23 provides:

Charges should not be laid under the Crimes Act solely to avoid a time limit for prosecution under a specific Act unless the conduct of the proposed defendant, or the circumstances in which the alleged offence was committed, contributed to the offence under the specific Act being out of time. In determining whether it would be appropriate to proceed under the Crimes Act in such a case, it may also be necessary to have regard to any delay on the part of the responsible investigating agency in making enquiries in respect of the suspected breach and/or in referring the case to the DPP.

I agree with the submission of Counsel Assisting that, assuming a construction of section 29B favourable to the prosecution (an assumption which I believe is justified) the sole purpose in any prosecution now to be brought under that section would be to avoid the time limit for a prosecution under the CE Act, which time limit has now expired. Further, there is no evidence to suggest that any possible defendant contributed to the offence under the CE Act being out of time. Accordingly, I will not be recommending that there be any referral to the Commonwealth Director of Public Prosecutions in relation to a possible breach of section 29B of the Crimes Act.

## Conspiracy

There is evidence capable of suggesting that on some occasions the falsification of the electoral roll was the result of the efforts of a number of persons acting together or, in the language of the law, a conspiracy to falsify the roll. Section 86(1) of the Crimes Act proscribes conspiracies to commit an offence against a law of the Commonwealth, but only if that law carries a penalty of imprisonment for more than 12 months, or a fine of 200 penalty units or more. During the initial part of the relevant period a penalty unit was \$100 but later it was increased to \$110. A breach of section 339(1)(k), section 337 or section 342 of the CE Act therefore fails to satisfy either of these requirements. In any event, section 86(8) of the Crimes Act provides that any defences, procedures,

limitations or qualifying provisions that apply to an offence also apply to the offence of conspiracy to commit that offence. Consequently, the time limit of 12 months which, by virtue of section 15B of the Crimes Act, applies to the provisions of section 339(1)(k), sections 337 and 342 would preclude any prosecution for a conspiracy to commit any one of those offences.

In my view, section 86 of the Crimes Act is a statutory reflection of the courts' long-term criticism of the practice of charging a conspiracy rather than charging the substantive offence where the evidence shows one was committed (see *R v. West* (1948) 1 QB 709; 32 Cr App R 152; *R v. Griffiths* (1966) 1 QB 859; 49 Cr App R 279) and especially when the time limit for prosecuting the substantive offence has passed. In such circumstances the conspiracy charge can be seen to be a device to circumvent the time limitation for instituting proceedings for the substantive offence and as unfairly resurrecting a statute-barred charge. A conspiracy charge may in the circumstances also be, arguably, an abuse of the court's process.

I should mention at this stage, that although there is no provision of Queensland Statute Law which mirrors section 86(8), I would not be prepared to recommend that a report be referred to the Queensland Director of Public Prosecutions for consideration of charging a conspiracy to commit an offence against the electoral laws of Queensland relating to a consensual false enrolment. I have reached this decision bearing in mind the courts' criticism referred to above, and which I shall refer to again when writing on the 1986 South Brisbane plebiscite and possible conspiracy charges. Other matters I have borne in mind are the fact that any offence charged under Queensland law would relate to events that occurred earlier than 1 January 1992 (when the separate state roll ceased to exist) and further, as with the Commonwealth, the time limitation for the prosecution of any substantive offence has passed.

## Forgery and/or uttering

I turn now to the law with respect to forged enrolments relating to the joint roll.

Two Commonwealth Statutes were applicable to such enrolments. They are the Crimes Act and the CE Act. Ehrmann was prosecuted under the Crimes Act and Kehoe was prosecuted under the CE Act.

There were a number of instances where a witness denied any knowledge of the enrolment form bearing his or her name but not his or her signature. Forgery of Commonwealth documents is proscribed by section 67 of the Crimes Act, which provides:

Any person who forges, or utters knowing it to be forged:

...

(b) any document ... deliverable to ... any public authority under the Commonwealth ...

...

shall be guilty of an indictable offence.

Penalty: Imprisonment for 10 years.

There is no time limit for instituting proceedings.

The offences to which Ehrmann pleaded guilty were brought in under section 67(b).

Section 344 of the CE Act provides ...

(1) A person shall not:

(a) forge any electoral paper; or

(b) utter any forged electoral paper knowing it to be forged.

Penalty: \$1000 or imprisonment for 6 months or both.

(2) In this section the words **electoral paper** include any prescribed form or approved form.

For the purposes of section 344, an electoral enrolment claim form was at all relevant times either a prescribed form or approved form. Offences under section 344(1) must be prosecuted within one year after the offence was committed (section 15B Crimes Act). Kehoe pleaded guilty to forgery charges brought under section 344(1)(a). He was dealt with summarily in the Magistrates Court at Townsville.

I return to 'forgery' charged under the Crimes Act, which the legislature, to judge by the maximum penalty, obviously views as a more serious offence. The conduct of Kehoe and Ehrmann to which they pleaded guilty might all have been the subject of charges under either the Crimes Act or the CE Act.

Section 63 of the Crimes Act defines what amounts to forgery in a number of different circumstances. That section relevantly provides that a person shall be deemed to forge a document if he makes a document which is false, knowing it to be false and with intent that the false document may be used, acted on, or accepted, as genuine, to the prejudice of the Commonwealth, or of any State or person. In *Brott v. The Queen* (1991–1992) 173 CLR 426 the High Court in discussing the common law offence of forgery explained that merely to make a false statement in a document that is otherwise genuine does not make it a false document for the purposes of the law of forgery.

Therefore, in the context of my investigation of enrolments relating to the joint roll, an enrolment application form which states a false address but was signed by the applicant could not be a forgery, because it purported to be, and was, an application for enrolment by the elector named, albeit containing a false statement. I should add that Brott's case deals with the common law relating to forgery. Section 63 of the Crimes Act headed 'What amounts to forgery' contains three subsections each of which defines many circumstances in which a person is deemed to have forged or shall be taken to have forged a seal, signature document register or record or a counterfeit of a seal or an impression of a seal or of a signature. There is in the CE Act no provision comparable to section 63 and although there is no need to discuss the matter in detail, it seems to me that Brott's case could well have greater significance in relation to charges of forgery under section 67(b) of the Crimes Act than charges of forgery under section 344(1) of the CE Act.

I bear in mind that section 4(1) of the Crimes Act reads:

- (1) Subject to this Act and any other Act, the principles of the common law with respect to criminal liability apply in relation to offences against laws of the Commonwealth.

I turn now to uttering. Section 64 of the Crimes Act defines 'What amounts to uttering' and relevantly reads:

A person shall be deemed to utter a forged ... signature, document ... if he tenders ... or attempts to tender ... or deals with it or attempts to ... deal with it, or attempts to induce any person to ... deal with, act upon, or accept it.

Section 67(6) of the Crimes Act relevantly provides:

Any person who ... utters knowing it to be forged:

- (b) any document ... deliverable to any public authority under the Commonwealth ...

shall be guilty of an offence.

Penalty: Imprisonment for 10 years.

It will be apparent that whenever any person delivered to the Australian Electoral Commission an application for enrolment and at the time that person knew that application was forged that person uttered that application.

It will be remembered that Ehrmann pleaded guilty to 24 charges of forgery and 23 of uttering. The utterings were of 23 of the documents which she had forged.

## Perjury

If perjury is to be charged it must be under section 123 of the Criminal Code of Queensland. I set out section 123(1) which contains part of the Code's definition of perjury:

123 (1) Any person who in any judicial proceeding, or for the purpose of instituting any judicial proceeding, knowingly gives false testimony touching any matter which is material to any question then depending in that proceeding, or intended to be raised in that proceeding, is guilty of a crime, which is called perjury.

I understand that it is the practice of the CJC to refer to the Director of Public Prosecutions, only cases which, in the CJC's view, are clear cases of perjury. This is not a surprising approach in light of the difficulties in establishing to the requisite standard of proof (beyond a reasonable doubt) that a witness knowingly gave false testimony rather than gave false evidence believing it to be true. Case law suggests 'knowingly' may mean 'deliberately and not inadvertently or by mistake'. It follows that in circumstances where the witness is giving evidence in relation to matters which occurred many years earlier it must be more difficult for the prosecution at trial to prove beyond reasonable doubt that the witness did not make an honest mistake. Experience shows that an honest witness, even one who is adamant, may give evidence that is found to be unreliable or incorrect. Such a witness would not necessarily commit perjury. An essential element in a perjury charge is proving that the accused person knowingly gave false evidence.

I also refer to section 125 of the Criminal Code of Queensland, which provides that a person cannot be convicted of committing perjury upon the uncorroborated testimony of one witness. This provision limits the scope for bringing perjury prosecutions. I should also mention that in 1997 a new section, section 123A was inserted into the Criminal Code. It began operating on 1 July 1997. It reads:

If, on the trial of a person for perjury, the jury is satisfied that —

- (a) the accused has made 2 statements on oath or under another sanction authorised by law, 1 of which is irreconcilably in conflict with the other ; and
- (b) the accused made 1 of the statements knowing it to be false;

but the jury is unable to say which statement was falsely made, the jury may make a special finding to that effect and find the accused guilty of perjury.

The presence of this section may be seen as statutory recognition of the difficulty that can arise for the Crown when attempting to prove a perjury charge.

As the footnote to section 123A appearing in Carter *Criminal Law of Queensland* says:

This section obviates the need for the jury to be satisfied beyond reasonable doubt that a statement was false provided they are satisfied to the requisite standard that one of two irreconcilable statements was deliberately false.

I have considered the evidence given before me and reached the view that I should not recommend to the CJC that any person be the subject of a report to the Director of Public Prosecutions concerning perjury. Later in the report I will discuss the question of perjury with respect to specific witnesses, but the above view will not change.

## OTHER ALLEGATIONS

As Counsel Assisting indicated in their closing submissions, apart from the allegations that were the subject of evidence at the public hearing, many more matters were raised with the CJC. Many were investigated and found to be without foundation. Many were clearly out of time for any prosecution action or did not fall within the terms of reference or within the jurisdiction of the CJC in that the allegations related to federal elections or federal plebiscites or they did not otherwise relate to a past or present holder of an appointment in a unit of public administration. Many of the allegations related to purely internal Party politics which did not have any connection with the electoral roll and thus fell outside my terms of reference and the jurisdiction of the CJC. None of these was investigated.

Some matters were raised with witnesses to ascertain whether those matters should be further pursued. An example of this was the issue of a suggested 'AWU slush fund'. Lee Bermingham and Warwick Powell gave oral evidence that such a fund existed for the payment of ALP memberships. However, there was no evidence that such a fund was called upon with the specific purpose of paying for fraudulent enrolments and was therefore not within the CJC's jurisdiction.

Where matters were still within time for any prosecution action and they related to federal matters, but were outside the terms of reference of the Inquiry and outside the CJC's jurisdiction, they were forwarded to the Australian Electoral Commission and the Australian Federal Police for consideration of possible criminal investigation. Some allegations where the subject matter is now out of time, such as the allegations reported in the media in late December 2000 relating to Independent candidates Tisha Crossland and Robert Hugall, were not investigated. However, they were forwarded to the Australian Electoral Commission and the Electoral Commission Queensland to assist those bodies in the detection and prevention of official misconduct.

It is not intended to make further reference to any such matters.

## **STRUCTURE OF THE REPORT**

The next chapter of the report will discuss in more detail the evidence given by Ehrmann who, for the purposes of her sentence in the District Court in Townsville, had prepared affidavit material to place before the court stating in effect that she was part of a general scheme that was followed within the ALP in Queensland and practised across the State. As already appears, it was these allegations by Ehrmann that provided the catalyst for this Inquiry.

After discussing Ehrmann's allegations, I discuss the ALP rules governing voting at preselections. Then I address each of the terms of reference in turn. In this regard I have referred in much greater detail to that evidence which bears upon any recommendation that I shall make to the CJC to refer a report on a person to either of the Directors of Public Prosecutions. In those instances I have also dealt in greater detail with any submissions made on behalf of the person than I have done with other submissions.

Finally, although I have not been required to make recommendations, I provide some commentary and make observations on what I perceive to be weaknesses in the electoral process, which have been disclosed in the course of the investigation, and on other relevant matters.



## SETTING THE SCENE

It will be apparent by now that this Inquiry was sparked by Karen Lynn Ehrmann when on 11 August 2000 she made in public the allegations of electoral misbehaviour to which I have earlier referred.

She gave evidence to this Inquiry on 3 and 4 October (the first two hearing days of the Inquiry) and on 11 October. Her evidence covered a number of topics to which some reference is required in order to understand the direction in which the CJC's investigation proceeded.

Before I do so I will set out some of the evidence concerning factions and the processes in the ALP touching upon preselections or plebiscites and factions. As the evidence developed it became apparent that the electoral misconduct of which I heard revolved principally around internal ALP preselections.

In the course of the chapter I will also provide some background information concerning Ehrmann and the two people she implicates in improper conduct, Lee Michael Bermingham and Warwick Powell.

### CONDUCT OF POSTAL BALLOTS BY THE GENERAL RETURNING OFFICER OF THE ALP

To understand the evidence of Ehrmann and others concerning their conduct relating to plebiscites it is helpful to recount Joan Budd's evidence when she was asked on 9 October 2000 to explain 'from the beginning' how a plebiscite is conducted. Joan Budd was from 1988 up to late 2000 the General Returning Officer of the ALP.

The evidence showed that there were two types of ballots for plebiscites or preselection contests — postal ballots and stand-up ballots. The evidence also showed that in preselection contests stand-up ballots as they were called (i.e. ballots at which electors voted in person) appeared to be the exception rather than the rule.

In relation to postal ballots, Joan Budd said:

Initially I would get a phone call from the State Secretary of the day to say that the Party wished to open nominations for, say, state seats and that they wished to open them on the night of the next administrative committee meeting and they would ask me to draw a timetable from that date. The timetables were fairly standard. Nominations would be open for a month. The postal ballots would be conducted over a period of a month and then the central Electoral College would meet at the weekend after the close of the ballot. In exceptional circumstances the administrative committee might require me to have a shortened timetable. Once nominations had been called I would have published in the newspapers an advertisement calling for nominations for people eligible and willing to contest the positions. At the end of the — at the close of nominations I would have received a number of nominations that would be unopposed, and a number of nominations that would be contested. I would then ring up the Party Office and say that there would be ballots required in X number of seats and ask for the plebiscite list to be pulled off for those particular seats. I would then take the nominations to what we called an endorsement meeting where the administrative committee would determine whether, in fact, the nominations were eligible and if they were to endorse those people to contest a plebiscite. At that stage the plebiscite list would then

be handed over to me and I would send to each of the candidates in that particular ballot that plebiscite list along with a letter saying to them that this was the preliminary list issued for the ballot in their area and asking whether or not they were seeking to have any changes made to that list. (T448)

It was apparent that the sending out to candidates of the plebiscite list was an important step in the process. Once the candidate received that list the opportunity to change its content arose, e.g. by challenges to eligibility to vote based on place of residence.

The following questions and answers appeared in Budd's evidence:

Q. They could challenge some of the names on the list, could they? (T449)

A. They could.

Q. And they might ask that other names should be included, might they?

A. That's correct. The list from Party Office were [sic] actually drawn off the membership roll as per the members' listed address at Party Office and so sometimes there would in fact be errors in the list.

Q. And who would determine these requests for additions and deletions?

A. I would determine those requests. It would depend on whether or not the — there could be a simple determination made, for example if a candidate challenged a member on the requirement they didn't have sufficient membership I would then ring Party Office and ask them to look up the length of that member's membership. Or they might challenge a member on the grounds that the member had not been registered. I would again ring up——

Q. Registered where with them?

A. Registered with the branch. You had to have registered membership with the branch.

Q. Yes?

A. I would then ring up Party Office and ask for a check to be made on the registration. If it was a simple challenge on those grounds I would rule on it immediately. If——

Q. And did you ever receive any challenges on the basis that the member did not live at or was not enrolled at the address on the plebiscite list?

A. Yes, I did.

Q. Was that a common occurrence?

A. Yes.

Q. How did you determine that?

A. Depends which round of ballots we were talking about. Once we moved to the electronic roll the custom was to actually issue the member with a ballot paper but to make the point that that ballot was up for challenge when it was returned because the Party electronic roll may not at that stage have received the update that would cover the period.

Q. You're talking about a copy of the roll from the Australian Electoral Commission, are you?

A. That's correct.

Q. At what stage did this electronic roll come in?

A. The electronic roll was introduced I believe at the 1994 conference. Prior to 1994 we used the last printed roll.

Q. And you'd get that from the Australian Electoral Commission, would you?

A. The Party kept a complete set of them at Party Office.

Budd's evidence also disclosed the following matters:

- (1) The plebiscite list that Budd sent to each candidate in the plebiscite was issued to her from Party Office and its accuracy would be subject to challenge by the candidates — this list contained the names and addresses of

all currently registered Party members within the electorate for which the plebiscite was to be held.

- (2) In the event of a challenge on the basis that a member was not living at the nominated address, if the General Returning Officer did not have the latest update of the Commonwealth roll which covered the period under the Rules, Budd would advise the candidate that in the circumstances the member would be given the benefit of the doubt and would be issued with a ballot paper, but advised that the member's vote could be challenged at the count by which stage the General Returning Officer would have received the latest update of the electoral roll.
- (3) In the event of a challenge to a particular person's eligibility to vote on the basis that the challenger did not believe the person was actually on the electoral roll, Budd would tell the challenger that he or she should challenge the vote again at the count of the ballot by which time Budd would have the updated roll.
- (4) Challenges that Budd classed as 'simple' and 'could be proved' were called 'preliminary challenges' and could result in amendments to the original plebiscite list made by her. Budd could also determine requests for additions to the plebiscite list.
- (5) After Budd had determined the preliminary challenges she sent the ballot papers out to those persons remaining on the plebiscite list — each of these was sent to an address supplied to her by the Party.
- (6) The member's address that appeared on the plebiscite list sent to the candidates came from ALP records.
- (7) Before the ballot papers were sent out Budd sent a letter to the post office at West End, Brisbane, and ordered 'the Party's locked bag'. She said:

The Party had a special locked bag for the return of ballot papers that was kept behind the counter at the West End Post Office.

- (8) In the above letter Budd told the Postal Manager the date on which the ballot papers would be issued and the date on which the ballot would be closed. She went on to say:

After that time I would come to the Post Office in the presence of scrutineers and open the bag. I would supply a padlock which somebody from Party Office would go down and put on the bag and I would have the key to the padlock at all times. (T451/42)

- (9) Budd described the ballot papers, the 'ballot paper only envelope', the tear-off slip and the tamper-proof return envelope. [Exhibits 46A, 46B, 46C and 46D contain examples of such documents. Exhibit 169 is a tamper-proof envelope and ballot envelope in use in 1996 and prior thereto.]
- (10) She said that the ballot papers were counted at the Party Office where all the records were held.
- (11) When asked what was done with the ballot paper after it had been filled in she replied:

Well, when you fill in your ballot paper you would fold it up and seal it inside the ballot paper only envelope. You would then sign the tear-off slip with your membership details and you would put the ballot paper envelope and the tear-off slip separately, both inside the tamper-proof envelope and seal them up and you would post them. The tamper-proof was addressed to the locked bag. (T452 line 30)

She was then asked:

And what's this tear-off slip? There's something to be signed, is there?

And she replied:

Yes. It was an instruction sheet telling you exactly what you should do but also saying that you had to sign this slip. That was to check against your Party Office renewal when it got back to ensure that the correct person got the ballot

paper. (T452)

- (12) Budd said the tamper-proof envelopes were addressed to the locked bag at West End Post Office.
- (13) Disputes arising from Budd's decisions on eligibility to vote at a plebiscite (amongst other matters) could be taken to the ALP Disputes Tribunal.

I noted two interesting aspects of Budd's evidence, which appear from the following questions and answers:

- Q. And what if the challenge was that the member had been fraudulently enrolled at that address and did not in fact live there?
- A. Anybody who ever made that allegation to me that they believe someone was fraudulently enrolled I would advise them to go to the Australian Electoral Commission.
- Q. Well, I hope so but apart from that what did you do about the challenge?
- A. There was nothing I could do about the challenge. My responsibility was to ensure that the ballots were held in accordance with the Party's rules. The Party's rules were specific that if, in fact, someone was on the electoral roll and they had the required membership then the vote was valid.
- Q. Do you mean you just read the — interpreted the rule literally?
- A. I was the General Returning Officer. I had no other alternative than to interpret the rules literally.

I should add that it appeared to me from the Gillman–Ehrmann dispute (to which I will return briefly) before the ALP Disputes Tribunal, where a question arose as to whether or not a certain person in fact resided at the address stated on the Commonwealth Electoral Roll and therefore may not have been eligible to vote, that the tribunal did not resolve that dispute but appeared to take the view adopted by Budd. That view was that the address shown on the electoral roll was correct and the tribunal would not 'go behind the roll', i.e. the accuracy of the roll was unchallengeable.

In relation to points 5 and 6 concerning the member's address, I mention Exhibit A, which is a photocopy of a typed document headed:

LAST KNOWN ADDRESSES OF HEATLEY/VINCENT MEMBERS IN 1994 AS  
OPPOSED TO HAVING PO BOXES LISTED AS THEIR ADDRESSES IN 1996

Ehrmann was a member of and officer holder in the Heatley/Vincent branch.

This document showed 35 names — in 1994, save for two of these names, the rest had apparently residential addresses. In 1996 all 35 names had post office box addresses. I mention by way of example that in a number of these, PO Box 141 Bohle appeared — this was a box under Ehrmann's control. As Ehrmann agreed (T37):

The purpose of this exercise of falsely enrolling somebody is to enable you to control their vote in a plebiscite.

and:

The system only works if you can get your hands on the ballot paper.

The reason for the post office box address was that the ballot papers were to be sent to that address and the person having control of the post office box gained control of the ballot papers. Budd circumvented this practice in 1996 by decree that postal ballots were to be sent to residential addresses and not post office box addresses. Once Budd made that decree, 'safe houses' achieved greater importance. Although Exhibit A did not become a numbered exhibit, I understood its accuracy not to be challenged.

I should also refer to the fact that the significance of a safe house lay in the fact that mail from the ALP (e.g. ballot papers) could be sent by the ALP to ALP members who, according to the ALP records, resided at that particular address but did not in

fact reside at that address. The evidence from Ehrmann and Foster demonstrated that each of them had a number of safe houses at which they were able to gain possession of ballot papers sent out in the names of persons who did not in fact reside at the safe house. At the end of the day, Ehrmann had control of these ballot papers and could, by forgery if need be, direct the manner in which the elector's vote was cast.

## ELIGIBILITY TO VOTE IN A PRESELECTION BALLOT

It is also useful at this time to explain in general terms the ALP rules concerning eligibility to vote in a plebiscite and what changes have been made to the procedures since 1993. Ehrmann said in evidence that the following criteria had to be fulfilled before a person was eligible to vote at a preselection ballot in 1993–94.

1. The person must live in the electorate for which a candidate was being chosen.
2. The person must be a member of the ALP.
3. The person must have been a member of the ALP for at least six months.
4. The person must be enrolled on the electoral roll for the electorate in which the preselection was being conducted and before a date fixed by the ALP Administration as the closing date for being enrolled.

Evidence was given on 10 October 2000 by Michael Hans Kaiser, the former State Secretary of the ALP, of the following steps taken by the ALP to change the rules concerning eligibility for a plebiscite with the intention to remedy or discourage false enrolments. Kaiser became the State Member for Springwood in February 2000 and was so at the time of giving evidence before the Inquiry:

### 1. 1994

Kaiser said that in 1994:

The eligibility requirements for voting in plebiscites were changed [in this year] to require that members be on the electoral roll as at the date of **opening** nominations rather than the date of closing nominations. (T568/30–55)

### 2. 1997

Kaiser gave evidence that further changes to the eligibility requirements for voting in plebiscites were made in this year. No longer was a would-be voter required to be a member of the ALP for six months; registered Party membership of 12 months was required. Kaiser explained this as follows:

The 12 months' requirement isn't in respect of your Party membership, it's in respect to the amount of time that you've been a registered Party member so you would need to have become a registered Party member and attended at least your first branch meeting 12 months prior to the opening of nominations.

Kaiser said, in addition, in 1997 the ALP Rules were amended to provide that the electoral roll was frozen for eligibility purposes as at 31 March each year. This meant that members were eligible to vote in preselections wherever they were enrolled as at the preceding 31 March irrespective of whether they had subsequently moved.

Kaiser gave evidence that this new rule was colloquially known as 'the roll freeze rule' and:

The reason we did that was again to remove the incentive of changing enrolment to take advantage of where preselections may have been occurring. (T592)

### 3. 1999

The Inquiry heard evidence of what was called 'branch stacking'. This practice might or might not be attended with illegality. Kaiser said that in 1999 the ALP introduced a rule which limited to five the number of new members who might be admitted to Party membership per branch per month. Kaiser said this rule became

known as ‘the stack break rule’ and:

The purpose of that was twofold. One was to limit recruitment activities ... the second motivation for doing it was to remove the incentive that was alleged to have been there to engage in electoral fraud. (T592–593)

Kaiser explained, in addition, a rule provided that there should be not more than one branch meeting per month, but that there could be other special meetings — special meetings of branches were not empowered to admit new members (T593).

I note that, historically, since 1907 the ALP Rules have tied eligibility to vote in plebiscites to the address shown on the electoral roll. Mr Mulholland has submitted:

This has proved to be a temptation for some individuals to break the law but it is a good rule which, along with the recent changes to the rule, avoids ‘branch stacking’.

## FACTIONS

The evidence at this Inquiry was permeated by what was called ‘the factions’ within the ALP Queensland Branch. An understanding of the role of factions can be seen in the evidence of Kaiser. Kaiser, when giving evidence on 10 October 2000, was asked by Mr Mulholland to explain how the factional system worked and ‘what is the factional system ...’, Kaiser said:

A faction is a grouping within a political party — all parties or most parties have them. The Labor Party in Queensland at the moment and certainly since the 1994 State Conference has four factions. Membership is not compulsory. You can be a member of the Labor Party without being a member of a faction. But people who are, generally speaking, of a like mind do tend to group together in factions. It’s as a result of the proportional representation system of voting that exists within the Labor Party for all internal ballots. Essentially it’s very hard to achieve policy for internal electoral outcomes without friends and so friends congregate in factions. (T588/50–589/3)

He said that prior to 1994 there were three factions and now there are four. He named the four — Labor Unity, the Centre faction, the Queensland Left, and Labor Left.

He went on to say that Labor Unity and the Centre faction, more commonly referred to as the AWU faction, were known as Right factions and that the remaining two were known as Left factions. He said that during the period these four factions have operated in the Labor Party, no one faction has had more than 50 per cent of the vote. The following appeared in his questioning by Mr Mulholland:

- Q. So what percentage of the vote then would the Centre faction or AWU faction have held since 1994?
- A. Oh roughly 40 to 43 per cent of the vote.
- Q. So that means in order to consensus in relation to policy issues people require cross factional support. Is that the way it operates?
- A. Yes you need 50 per cent to win anything in an internal electoral ballot whether it’s for preselection or whether it’s to get a policy idea up and so no one faction can do that on its own so there’s always a lot of cross talk.
- Q. Now during the questions that you were asked by Mr Hanson you referred to even members of the same faction having disagreements in relation to different issues. Do I gather from that that even though people may agree to belong to a particular faction it doesn’t mean to say that on every policy issue they will reach the same conclusion?
- A. No certainly not and you know there are members of Left factions who have more right wing views on some issues than me and you know I have more left wing views on some issues than some members of the Left. It doesn’t necessarily prescribe how a person may think about policy issues. (T589)

Later in his evidence, Kaiser was asked about the approximate proportions of votes that the other three factions had. He said that Labor Unity got roughly 15 per cent of the votes, Queensland Left got about 25 per cent and Labor Left about 20 per cent.

The following questions and answers then followed:

- Q. So that what it really means is that if the Centre faction, with 40 to 43 per cent, is not going to be defeated the other three have really got to get together?
- A. If the circumstances arose where the Centre faction was pursuing an issue and didn't have the support of other groupings, yes it would be defeated
- Q. Yes and if one of the other groups teamed up with the Centre or the AWU then those two were invincible, putting it bluntly?
- A. Perhaps not invincible, but yes, they'd certainly win the outcome of whatever ballot that was happening at the time on a particular matter. (T594–5)

Earlier, Kaiser's evidence was that the State Conference was, and is, the supreme policy-making body for the ALP Queensland Branch and that it is important for each faction to have as many as possible of its members elected to the State Conference. He told me also that the following committees and offices were elected from State Conference:

- The Administrative Committee of the Party
- The Disputes Tribunal
- Policy Committees
- The Rules Committee
- The Office of State Secretary
- The General Returning Officer
- The State President
- The Assistant State Secretary
- The three Organisers that the Party employs.

Before leaving the topic of factions, I should refer to some evidence relating to the role of factions in the Disputes Tribunal. This tribunal is empowered to hear and determine all matters in dispute within the Party and properly referred to it. There was evidence from which it could be inferred that the Tribunal's decisions are to some extent governed by the factions represented on the Tribunal.

Lindesay Gordon Bauer Jones, a former Assistant Secretary of the ALP, gave evidence (at T1595) when speaking of the 1993 East Brisbane ward plebiscite — this was at a time when the ALP had three factions. Part of his evidence was:

Chairman:<sup>1</sup>

- Q. And do Party members throughout the State take an active interest in what's going on in the Disputes Tribunal and the sort of matters that come before it?
- A. They should or they will in the future.
- Q. No, I'm going back to 1993 and since then?
- A. No — probably not because — I guess because of the composition of the Disputes Tribunal.
- Q. I see?
- A. It's — the Disputes Tribunal is elected by a conference. It's not a jury system.
- Q. The decisions that are made there are, to some extent, governed by the factions that are represented on the Tribunal. Is that what you're saying?
- A. Well, I guess the saying is, if you've got the numbers you've got the numbers.

If Jones is correct, his evidence impugns impartiality of the Disputes Tribunal.

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<sup>1</sup> The Honourable T F Shepherdson, QC.

Ehrmann gave oral evidence concerning the AWU faction and I shall shortly refer to part of that evidence.

## THE ELECTORAL COLLEGE

Kaiser's evidence was to the effect that candidates seeking to win plebiscites have to endure a two-stage process. First the candidates must contest their local poll and then undergo scrutiny by the Electoral College.

The following is part of the evidence Kaiser gave when questioned by Mr Mulholland concerning the Electoral College:

- Q. Well now, was there also a change in 1994 in relation to what is known as the local vote rule? Do you recall that, there being 60 per cent local vote rule that was changed?
- A. Yes, yes.
- Q. What happened there?
- A. Well, there's — within the Labor Party, there's two — there's two processes by which people get themselves elected. There's a local ballot and then there's an Electoral College and both of those processes contribute 50 per cent towards a final result. There was, prior to 1994, a rule which said that if a person — if a candidate received 60 per cent of the local vote, then the Electoral College wouldn't meet to consider that preselection, that that person would be automatically elected. It was called the 60 per cent rule.
- Q. And why was that changed, do you know?
- A. It was — it was abolished, certainly in part, to always ensure that the Electoral College would meet on preselections. It was considered past its use-by date in terms of, you know, a way of bypassing the Electoral College.
- Q. The Electoral College being, of course, an elected body?
- A. From the State Conference. (T595)

A little later Kaiser gave the following evidence.

- Q. Since the abolition of what I'll call the 60 per cent rule the situation now is that you might have one candidate of the local poll who gets — well say there's 100 votes, they get say 57 per cent and the other one gets 43 per cent of the votes?
- A. Yes
- Q. And if the 57 per cent doesn't belong to the AWU there's a good chance, is there not, that the Electoral College can come to a decision which means that they lose?
- A. It's certainly the case that people who get a majority of the votes locally don't necessarily win at the end of the day because the Electoral College may not view them as a suitable candidate and may vote against them in such numbers as to — when combined with the local result — mean that they're not the successful candidate.
- Q. And that seems to me as I understand it to flow from the fact that one, or perhaps two, of the factions controls the Electoral College. Would that be a fair statement?
- A. Yes, or three in combination against one another or any of the — any combination at all and almost every combination has occurred at some stage.
- Q. So the wishes of the locals in a way are overridden by the Electoral College?
- A. Well — it's frequently put that way within the Party but it's a two-stage process and neither stage has dominance over the other within the rules. It's simply a two-stage process and there's not a winner until both stages have been completed. (T595)

Kaiser made clear that the Electoral College did not exercise any vote in relation to internal ballots as distinct from plebiscites but conceded that when the Electoral College came to vote it knew how the local vote had gone and what the local vote had been.



The questioning by Mr Mulholland continued:

- Q. Is it as a matter of practical reality the fact that the Electoral College does tend to take account of the strength of the local vote?
- A. There are occasions when that's occurred and I think a lot of notice is taken of the local vote but there have certainly been occasions when local results have, you know, to use the terminology that's often used within the Party, have been overturned. (T596)

He then agreed:

It depends on the particular circumstances.

One of his answers to Mr Mulholland may be thought very important:

- Q. Does the Electoral College always vote along factional lines?
- A. Yes I can't recall an occasion when it hasn't. (T596)

And later he was asked:

- Q. Do members of a faction always vote on issues along factional lines?
- A. If they are members of the Electoral College they almost certainly always would but delegates to State Conference for example you wouldn't expect them to always vote along factional lines. (T596/35)

## EHRMANN'S EVIDENCE

Having given some explanation of the Party processes I turn now to Ehrmann and some of the evidence she gave.

### Ehrmann's background

Ehrmann stated that she was a member of the ALP from 1979 until approximately two years ago. She stated that she was elected as a councillor of the Thuringowa Council in 1982 and the Townsville City Council in 1987. She remained a councillor of the Townsville City Council until 1997. She said that although she did not belong to a faction of the ALP for the total period of time that she was in the Party she was a member of the AWU faction or the Centre faction through the 1990s. She said that she was originally asked to join the AWU faction by Kaiser and Ken Davies.

Ehrmann told me that around the end of 1993 and towards the beginning of 1994 she became interested in seeking a state seat. She explained that initially the Townsville electorate was of interest to her as it was believed that the sitting Member might retire. She said that subsequently it was suggested to her that she should look at the state electorate of Thuringowa when that sitting Member indicated he could retire early.

Ehrmann explained that in 1996 she did participate in a plebiscite for the state electorate of Thuringowa and was successful over the other candidate, Terrence Noel Gillman, who unsuccessfully lodged a dispute with the Disputes Tribunal in relation to her conduct.

After claiming privilege against self-incrimination and being directed to answer questions, Ehrmann admitted that some of the charges for which she had been convicted related to her efforts to increase her own support base for plebiscites, including the one for Thuringowa. She also admitted to false enrolments in Townsville for the 1996 plebiscite between Anthony John Mooney and Michael Francis Reynolds. I will return in some detail to the 1996 Townsville plebiscite in the next chapter.

## The 1996 Thuringowa plebiscite

It was unnecessary for the CJC to investigate the 1996 plebiscite for Thuringowa (and the earlier ones) in relation to which Ehrmann increased her own support base. I will set out the reasons for this.

The CJC's jurisdiction is to investigate official misconduct and particularly by holders of appointments in a unit of public administration. Ehrmann's pleas of guilty included forging and uttering enrolment applications in 1996 for the purposes of increasing her own support in the Thuringowa plebiscite. There was no suggestion that this conduct may have implicated any other holder of an appointment in a unit of public administration. It is true Ehrmann was a holder of an appointment in a unit of public administration because she was a councillor on the Townsville City Council, but for reasons already stated no official misconduct proceedings can be launched against her. In addition she has been prosecuted and sentenced for her criminal conduct concerning the electoral rolls and that included conduct affecting the Thuringowa plebiscite.

As Ehrmann could never have been prosecuted for official misconduct and the only purpose in further investigating her conduct in the Thuringowa plebiscite (and the earlier ones) would have been to uncover possible further criminal conduct by her, to investigate her on that basis would have been unfair and a waste of time. Even if some further offences by Ehrmann during the time of the Thuringowa plebiscite had been exposed, prosecution for them would have been extremely unlikely to have resulted in any further penalty. (See *Mill v. The Queen* (1988) 166 CLR 59.)

I should add that on 30 August 2000 at Townsville, Gillman who was Ehrmann's opponent in the Thuringowa plebiscite was interviewed by officers of the CJC. It appears from that interview that Gillman had developed suspicions about Ehrmann's activities and from his personal research had found that people were recorded on ALP listings as living at a certain address, yet when he went to that address he found that none of them lived there. He gave his account of events to the CJC and said that he had been interviewed by the Australian Federal Police relating to their investigations of Ehrmann and Foster. When interviewed on 30 August 2000 by the CJC, he said that he was not aware of anything the Australian Federal Police did not have in relation to his concerns with Thuringowa. In more recent dialogue with the CJC, he advised that he had nothing further to add to the interview he had given to the CJC's officers. The transcript of his interview with the CJC is Exhibit 401J. In all the circumstances it was unnecessary to further investigate his allegations or call him as a witness before the Inquiry.

## Ehrmann implicates Lee Bermingham and Powell

Ehrmann told me that about the time she became interested in becoming a candidate for a state seat it was explained to her how she could enhance her prospects of being selected by boosting the numbers for her support in the plebiscite. It is not clear from her evidence when this first commenced, but it was certainly before 1994. Her evidence was that to a large extent Bermingham and Powell were responsible for this education. (Later in this chapter I will set out briefly some information concerning their backgrounds.)

Counsel Assisting questioned Ehrmann concerning what she was told to enhance her prospects of being selected at a plebiscite (T18–21):

- Q. ... can I take you closer to the time when you yourself were interested in nominating, you became aware of methods by which you could enhance your numbers, did you?
- A. Yes, there was general talk. Things were done in the Party quite regularly. There was — there were general conversations, even jokes, about different things and how they were done in other plebiscites.
- Q. All right. Well, what was it that they were talking about, what was being done?
- A. Well, basically, a lot of practices that — I suppose to go over them from the

top — where people were put on rolls at addresses that they didn't live for the purpose——

- Q. Now, what sort of rolls are you talking about, membership rolls or electoral rolls?
- A. On the electoral rolls at addresses that they didn't live.
- Q. And is this with their consent or without their consent or their knowledge?
- A. I think some of both.
- Q. Some of both?
- A. I was actually encouraged to have 20 to 25 floating voters.
- Q. Floating voters?
- A. Yes.
- Q. What does 'floating voters' mean?
- A. People who are willing to change their address to support me.
- Q. And these people——?
- A. To claim they lived at an address that they didn't live at.
- Q. And these are people who would cooperate in doing that, you're talking about?
- A. Yes.
- Q. It would be done with their knowledge?
- A. Yes.
- Q. And consent?
- A. Yes.
- Q. All right. So, what, you were advised to have 20 or 25, did you say?
- A. 20 to 25 was the general number for some reason.
- Q. Floating voters?
- A. Floating voters.
- Q. When was this told to you, Ms Ehrmann?
- A. It was around about that time when they were looking at getting numbers up for the state seats.
- Q. And who were the people who were telling you this?
- A. There was a number of people in the Party. In fact, I think, the situation that you were alluding to involved Mr Birmingham who is here at the moment.
- Q. What's his name?
- A. Lee Birmingham.
- Q. Mr Lee Birmingham, yes, and anyone else?
- A. Yes, there were but I really just can't — they were general Party members and I can't remember at the moment.
- Q. Very well. Well, if we talk about Mr Birmingham for a start——?
- A. And some people who were around Lee Birmingham.
- Q. And people what?
- A. Who were around Lee Birmingham, in other words, his supporters. He had quite a lot of boys that were sort of — did what he told them within the Party circles.
- Q. Now, when did this conversation take place with Mr Birmingham and where?
- A. I'm not quite sure of the time. It was around that general period but Lee would ring me and ask me to get people enrolled in the Party. He was the AWU's State Organiser and I think it was his general role to boost numbers for conferences and it was also his role to support people who were going for state seats and make sure they had the numbers and all that sort of thing.

- Q. So he was ringing you to get you to increase the numbers?
- A. Yes. He had quite a lot of conversations with me by phone and on a few occasions when he was in Townsville.
- Q. Now, when you say boost——?
- A. And other times when I was in Brisbane.
- Q. When you say 'increase the numbers', just what did that mean? Recruiting people to the Party or——?
- A. Increasing——
- Q. ——getting people into an electorate, what do you mean?
- A. There was — there was obviously a general thrust to get people to join the Party, to get people you knew, family members of that kind. There was one situation where Lee actually spoke to me about different things and asked me to talk to Warwick Powell.
- Q. Warwick Powell?
- A. And Warwick would actually give me information on how to run an election. And at that occasion, they actually joked about things that were done in the Brisbane — in a Brisbane by-election.
- Q. What did they say——?
- A. In a Council by-election. They——
- Q. What were they saying?
- A. They actually joked about the tactics they had used on — they spoke about white cards that were false and general tactics of things that they had done. It seemed to be quite a joke.
- Q. Well, what's a 'white card'?
- A. A white card is a card that's issued from the Electoral Commission. It actually gives the person an indication that they're on the roll.
- Q. Well, in what way was the card said to be false?
- A. They were used to identify people as being enrolled when they weren't.
- Q. Well, how did the false card come into being? Was that explained to you?
- A. Well, it was mentioned at the time that the white card came into being — in fact, Warwick Powell indicated that they had someone on the inside at the Electoral Commission. He didn't tell me a name so I'm not sure how they obtained these white cards but they filled in the white cards with people's names on them and they used that within the Party to show that those people were eligible to vote in a certain preselection when they weren't — they weren't actually on the roll.
- Q. And are these real people who lived elsewhere or are they phantoms?
- A. I'm not even sure if some of them were real or if some of them were phantoms. They explained the technique. They didn't go into details about the people, whether they existed or not.
- Q. And what was the technique that they explained to you?
- A. The fact that the white cards were filled in and used as proof of those people having been enrolled for preselection purposes.
- Q. And what use did they say was made of these false white cards?
- A. I think they were given to the Returning Officer to indicate that these people were eligible for votes.
- Q. And we're talking about voting for what? Plebiscite to select a candidate for an election or for——?
- A. Plebiscites to select candidates for election.
- Q. And what about internal ALP councils or committees, same thing?
- A. No. Internal committees——
- Q. Well, I'm not particularly interested in that?

- A. No.
- Q. But they were talking to you about falsifying records in terms of the electoral roll?
- A. They were discussing previous plebiscites, things that had been used. Some things were said jokingly. Basically, just explaining how successful they had been in doing the things that they had done.
- Q. Well, did they say what they had achieved by doing this?
- A. They had achieved people being elected to those positions.
- Q. As a candidate?
- A. As candidates.

After Ehrmann said that she could not recall whether Bermingham or Powell had named the successful candidates to whom they were referring, she continued with her evidence concerning her meeting with Powell (T23):

- Q. Did he give any further explanation?
- A. Yes, he went into some details of other things that they had done in other preselections. And he actually went over — as well as that he went over possible numbers with me that I may have for the state seat and I think actually discussed numbers in Townsville and Thuringowa.
- Q. When you say numbers are you talking about people who will vote for you in the plebiscite?
- A. People who — who I thought would vote for me in the plebiscite, yes.
- Q. And the purpose of this discussion, was it, was to explain to you how to boost your numbers?
- A. Yes, it was supposed to be campaigning techniques to help in the preselection, yes.
- Q. Any more detail then that Mr Powell gave you?
- A. Yes, they — they just outlined a number of things that they had done. They mentioned a few things. People collecting — I recall there was something said about people — and that was I think as a joking thing — that people actually fronted up at other people's houses claiming that they were supporting one candidate when they were actually supporting the other candidate and offering to help by taking their ballots away.
- Q. All right?
- A. How those ballots — those ballots of course didn't then support the candidate of their choice.
- Q. Very well. And were you urged to adopt these practices then?
- A. Yes, it was — it was like a school. I was being told how they had done things in other — other electorates. It was jokingly said how they were successful in doing this and it was encouraged.

Later Ehrmann gave the following evidence (T34):

- Q. ... before we leave 1993 and 1994, did you tell anybody what you'd done, and I'm talking about the improper things that you did, that you've admitted?
- A. I don't recall discussing it in general with people, no.
- Q. All right?
- A. I think Shane Foster was aware. There might have been other people. In '94 there might have been some others because other people were doing similar things. It wasn't something that I was doing in isolation or that I had dreamed up myself.
- Q. Well, now you mention that, I should ask you how you came to adopt this method because all you've told me so far about your tuition at the hands of Birmingham and Powell was something to do with false white cards. Now you haven't——?
- A. No, there was more than that.

- Q. —mentioned that anybody taught you or told you how to do what you did?
- A. Yes, it was generally — those sort of things were generally discussed. In fact, a lot of those things that had happened were discussed around conferences or around dinners in Brisbane. It was quite general knowledge that a lot of people were involved in doing it. There was jokes about different things. It wasn't something that I dreamed up or just thought on a day, I'll go and do this. It was quite common practice and common knowledge.
- Q. What are we talking about? Are we talking about falsifying the electoral roll?
- A. Signing people on to the electoral roll who, perhaps, didn't know or didn't exist, yes.
- Q. Right. So, I just—?
- A. It became almost a general culture.

Chairman:

- Q. When you say 'a general culture' in any particular area?
- A. No, just throughout a lot of state seats and a lot of areas. There was a lot of — it was generally joked about. Everyone had what they called — a lot of the factions had what they called 'stacks' and they mention — they use terms such as 'safe houses' and it was generally joked about that people had been transferred so many times that they didn't know where they were enrolled and every time there was a plebiscite so many people were moved into one area or out of another area. It was quite — it was happening for some years, not just in '94. I was certainly aware of it before then.
- Q. But when you say 'moved', not physically moved, just their names were moved on the electoral roll?
- A. Just their enrolment moved.
- Q. On the electoral roll?
- A. Yes.

It is clear from this evidence that Ehrmann was claiming that she had been tutored by either Bermingham or Powell in relation to floating voters, the use of white cards and safe houses and this occurred in a 'culture' where it was accepted in the ALP that names were merely moved on the electoral roll.

## Ehrmann and the AWU faction

In her evidence to the Inquiry, Ehrmann provided an insider's view as to the actual working of factions at a State Conference and in her campaign in 1996 to win the ALP plebiscite for Thuringowa.

She said she had heard that her opponent Gillman was saying that he had the support of the AWU faction. She went on to say that she did not use the AWU faction in order to assist her in Thuringowa.

In Ehrmann's evidence she was cross-examined concerning the AWU faction by Mr B Farr, Counsel for Bermingham. At T614 the transcript records Ehrmann saying:

And I was being told that if I didn't support Tony Mooney [in the Townsville plebiscite] that I wouldn't win and that tactics would be used. The same things that were being done in Townsville would be used against me, that people would basically be stacked in Thuringowa or moved and used against me.

The following questions and answers then followed (T614):

Mr Farr:

- Q. Now, you at that time were aligned with the AWU faction, is that correct?
- A. Yes, it is.
- Q. And aligning yourself with that faction was a political decision on your behalf, would you agree with that?

- A. It was certainly a survival position politically.
- Q. All right. Effectively to have any reasonable prospects of success in the Labor Party, obtaining a seat for instance, you need to be aligned with one of the factions, you'd agree with that statement?
- A. At the state or federal level, yes. Not in local government.
- Q. All right. In any event, you were aligned with the AWU and I take it you aligned yourself with the AWU for the reason of, as you said, survival, and I take it from that you mean survival of your own political career, to enhance your prospects of success?
- A. Yes, I was approached to stand or to join the AWU faction after I was approached to stand for a State Conference to support them. At that time they were working very strongly against me and I don't suppose I would have survived politically if I hadn't.
- Q. So the reason that you joined was to try and ensure your own political survival?
- A. At the time it was basically a survival position. They were very strong and they were certainly working to get rid of me.
- Q. At that time you knew of the internal machinations of the ALP, in other words, how the factions operated and the effects that they can have, the influence they can have?
- A. I knew of the influence that they could have within the Party, yes. The other areas and the way they operated, no.
- Q. All right. Now, when you made the decision to be part of the AWU faction, I take it you did that with the knowledge that the expectation is that you would then follow the AWU policy or the AWU directions in relation to certain issues, that you would follow their directions?
- A. To answer that I was first asked to support them at a conference before I joined. I was asked to join around about the same time. ***I don't think at that stage that I realised how much you were expected to follow their factional line. It was later as I attended conferences that I realised that members were asked to hand over ballots which were then filled in in a room by other people. A lot of pressure was put on you to support policies, positions, that you perhaps philosophically didn't believe in. That doesn't mean that I did on every occasion, but I did on a number of those conferences hand over my ballots.*** [my emphasis]
- Q. So even if you didn't fully appreciate what was required at the time you joined you quickly learned?
- A. I learned what they wanted you to do. I didn't go along with everything they wanted, no.
- Q. No, can I ask you, when did you? Do you remember when it was that you joined, if that's the correct term, the AWU? [I interpret the reference to 'AWU' being to the AWU faction]
- A. No, I'm not exactly sure of the exact time I joined.
- Q. Are you able to give us any help even by what year it might have been?
- A. No, because with that faction you don't necessary have to fill in an application or a joining — go through the process of officially joining, you go — you stand for conferences, for instance. ***You're asked to attend their faction room ... the factions have separate rooms at the conferences.*** The members who they are expecting to support them in some way are asked to attend those meetings, and in often [sic] case it's not necessary to actually put in an application to the faction to join. [my emphasis]
- Q. I see. You've mentioned——?
- A. I don't think I — I can't remember filling out an application to join the faction earlier in the piece so I think I was attending conferences and that wasn't required of me until very late, in fact around the '96 period.
- Q. Well, you mentioned that you were approached, I think at a conference, to join the AWU?
- A. Not at a conference, in Townsville.

- Q. Not at a conference, in Townsville, right. Do you remember when that approach was made?
- A. I know it was in the — Mike Kaiser was State Secretary at the time and Mike Kaiser spoke to me first at a lunch and then with Ken Davies, and at that stage they put it to me to stand for State Conference for them and Mike Kaiser and Ken Davies actually suggested that I join the faction.
- Q. All right, so it was those two people who made the approach?
- A. Yes.
- Q. Okay. Now, after aligning yourself with the AWU, as you've told us you soon came to learn of at least some of the things that were required of you, you've detailed those, and I'm not suggesting that you agree or disagree with them. Doing as required by someone in your position, for instance, was that an activity that you would reasonably expect would need to be undertaken to continue your survival and political success in the future?
- A. Sorry, I didn't hear you then.
- Q. It's a badly worded question, I'll reword it?
- A. Yeah.
- Q. Did you——?
- A. I couldn't understand the question.
- Q. Did you do what was required of you, handing over ballot papers, that type of thing, to ensure that you continued to have their support, the AWU support?
- A. **Yes, I did hand over ballot papers.** [my emphasis]

Chairman:

- Q. **What was meant by handing over ballot papers?**
- A. **At conference.**
- Q. **Just at that stage?**
- A. **They were my ballot papers at conference.**
- Q. **For matters that would be voted on at conference?**
- A. **Yes.**
- Q. **And they were taken away by somebody from the AWU faction, is that right?**
- A. **Yes, they were collected by a member of the faction who was asked to do it at the time.**
- Q. **Now, I infer from what you've said that the ballot papers weren't completed by you?**
- A. **No.**
- Q. **Whatever happened to them — if they were used in a vote somebody else filled them in, is that it? Putting it bluntly?**
- A. **Yes, the ballot — it was common practice within the AWU faction. They would have people who were appointed as runners to collect the ballot papers of all of the people who they considered to be aligned with their faction. They would then take those ballots into a room. In fact I've actually been into one of those rooms when they were filling them out and there was quite a lot of people sitting around filling out ballot papers. The papers would decide on who were appointed to different committees or positions.** [my emphasis]
- Q. Yes, I think I've got the picture. Thank you.

Mr Farr:

- Q. Once you became familiar with what was required of you, being aligned with the AWU, when you were, in 95/96, contemplating not following the AWU line, that is not supporting Tony Mooney, I take it that when you were having that period of uncertainty you were aware that to not follow the line of the AWU there could cause political harm to you?



**A. I was certainly told that it would cause political harm to me.**

Q. All right?

A. They would make sure it did.

Q. They're the threats that you spoke of in your evidence, is that correct?

**A. I was told that I would be destroyed.** [my emphasis]

I should add that there was evidence notably from Kaiser (T2396) and Bermingham (T2552) that at the 1994 State Conference plebiscite held in Townsville, Karen Ehrmann turned up with a shoe box full of completed ballot papers where according to Kaiser — based on information contained in a report by Ray Muller (part of Exhibit 401GG) — Ehrmann was seen to take the ballot papers out of the shoe box and put them in the ballot box. Kaiser said, 'This outraged ordinary Party members enormously'.

## LEE BERMINGHAM'S RESPONSE

Bermingham, who was 48 years old when he gave evidence on 4 December 2000, said he had completed his tertiary education at Griffith University obtaining a degree in Modern Studies. He 'later did an honours year and got first class honours'.

Bermingham told me that in May 1993 he was employed by the ALP as an Organiser. He said, 'It was my first and only position with the ALP' (T2524/5). He further said the following:

- (a) He joined the ALP in 1984.
- (b) At least two or three years after he joined the ALP he became a member of the AWU faction and in 1996 ceased his membership with that faction.
- (c) Kaiser was State Secretary of the ALP when he (Bermingham) began working for the ALP.
- (d) Before he began employment as an Organiser he, Bermingham, was 'a ministerial staffer' saying:

I was an adviser to Jim Elder who was then the Minister for Business Industry and Regional Development, for a number of months and before that I was the special adviser on regional development to Geoff Smith, who was also the Minister for Business Industry and Regional Development.

Later in his evidence he said he said he 'started working in the early 90s for the Goss Government'.

- (e) An Organiser has several functions, the main function being campaign work around election time. He was 'involved in a number of marginal seats usually in the local government, state and federal campaigns'.
- (f) 'Some factional work was required by Organisers', adding:

I was appointed by the AWU in a sense and whichever faction endorses a particular organiser there's an expectation that they do some factional work for that faction.
- (g) He recruited Powell to the ALP.

Bermingham told me that there was a fair degree of friendship between Powell and him and that they worked together on a number of different campaigns — he later described it as a close working relationship. At some stage in the early 1990s Powell resided at Bermingham's house and later in his evidence told me that he had first met Powell at a lecture he, Bermingham, had given on the event at Tiananmen Square at which he had been present.

Bermingham denied any conversation with Ehrmann concerning white cards, floating voters and safe houses. Although after claiming privilege against self-incrimination and being directed to answer questions, he acknowledged that he had encouraged people 'directly or indirectly to falsely enrol'.

Bermingham was questioned by Counsel Assisting about what Ehrmann described as the 'culture' within the ALP:

- Q. Very well. Now, Karen Ehrmann and many others have spoken to us about a culture within the ALP?
- A. Yep.
- Q. It's her word and it's the word used by others?
- A. Yes.
- Q. I think you've used the same word yourself, haven't you?
- A. I have.
- Q. In fact when we had a closed hearing here some weeks ago you yourself used that very word, did you not?
- A. Yes.
- Q. A 'culture or tradition' I think your words were?
- A. Yes.
- Q. Of stacking branches by means of false enrolments and persuading people to engage in those tactics. Would you like to tell us about that please? Why is it right to say there was a culture or a tradition to that effect and how far back does it go?
- A. Well, I believe historically it goes back to the relationship between Irish — the strong Irish Catholic influence in the early Labor Party. It was quite a common practice in Ireland and still is apparently and I think that was — its forebears in Australia probably led to those practices taking place. My understanding is it has been happening in the Labor Party and probably other parties for a long time ...
- Q. Who taught you?
- A. I don't think anybody taught me. I think I recognised that it was something that was possible to do and——
- Q. It doesn't take much learning, does it?
- A. It doesn't take a lot of learning, no. You know, that's right, it doesn't.
- Q. Anyway tell me more about this so called culture?
- A. But to go on about culture I think that——
- Q. And 'tradition' I think is an expression you've used yourself?
- A. What's become, I suppose, aware to everybody in the last few days is that, you know, in the area of Bowman there was quite a sophisticated method of putting people on using post offices boxes and particular addresses where mail could go to and I imagine that pretty much mirrors the sort of stuff that Ehrmann engaged in herself rather than the type of activity that I engaged in in East Brisbane, which was simply to falsely enrol people. So, I think that, one, there is a culture, but, two, there is different sorts of activities that took place under that culture——
- Q. I think you said when you were here last time giving evidence it wasn't looked upon as being morally wrong?
- A. No, I think it was seen more as being — I think I used the word sneaky and I think that's more the way in which people look at it. It wasn't — it was never — you know, my involvement of in it was never seen as actually affecting general elections, it was seen as a way of trying to win the plebiscite and, you know, it wasn't seen as exactly strictly honest but it was seen as more a sneaky — and there was a general belief I think that both sides in a plebiscite engaged in that sort of behaviour.

Chairman:

- Q. But you're altering a public record, are you not?
- A. Yes, I accept that that's the case and I'm just saying that at the time I didn't look at it in those terms. I looked at it more in terms of internal Party practices. I accept that it was altering the public record and was wrong to do so.
- Q. On which people rely?
- A. Yep.

Later Bermingham spoke of a culture as a system which was much broader than an individual such as he (T2683). He denied having ever described the culture as a culture of false enrolments.

Later again in evidence Bermingham (T2716) said:

I was operating within a culture that encouraged people to win plebiscites and so on and we took certain action that we saw did affect the results of those plebiscites.

## POWELL'S RESPONSE

When he gave evidence on 22 November 2000 Powell lived at 271 Annerley Road, Annerley, in Brisbane — he had lived there for six or seven years, perhaps longer. Earlier in 2000 he had bought 271 Annerley Road from Lee Bermingham and prior to that had been Bermingham's tenant. Powell said he first joined the ALP in 1990 (T1679/31). From about 1991 to the close of 1996 he was an adherent of the AWU faction.

Powell, who was a much younger man than Bermingham, had also attended Griffith University as a student. He obtained the degree of Bachelor of Arts in Asian Studies with honours as well as a University Medal (T1681).

He told me that he was a sessional lecturer and tutor at that university, tutoring 'in Media Studies, Culture and Politics and in Chinese History'.

He said that thereafter he worked as follows:

- (a) from the second half of 1992 to the end of 1994 he was a research officer in the Department of the Premier and Cabinet
- (b) as policy adviser to Tony McGrady, MP, the then Minister for Mines and Energy
- (c) from February 1996 to mid-August 1996 he returned to his 'substantive position' in the Department of the Premier and Cabinet'.

Powell told me that in the last 10 years he had been a member of the same branch of the ALP — a branch which had changed its name several times from Buranda to Chardons Corner to Annerley Central. Over that time he also held a number of positions in the branch — he was currently secretary, had been branch auditor and had been a branch delegate to the Federal Divisional Executive, the Electoral Executive Committee and the Municipal Executive Committee.

Powell denied the conversations attributed to him by Ehrmann. However, after claiming privilege and being directed to answer questions he acknowledged his involvement in false enrolments. In speaking of the 1993 East Brisbane plebiscite Powell said (T1729):

And there was a strong culture with [sic] the AWU faction at least that enrolling people was a legitimate tactic to gain advantage within a plebiscite.

...

I'm talking about the AWU faction.

...

From what I had been told — I have no direct first-hand knowledge of this, but as I mentioned to you before the 1993 plebiscite enrolment activity was very much across the board, both left and right, where the fight involved extremely high stakes from the point of view of — not just from local Government plebiscites but certainly in terms of the overall positioning of factional candidates for federal elections and the faction encouraged a broad range of involvement and contribution so to speak from particularly, people in Young Labor, and that included myself, to support the factional cause. And let me elaborate on that because I think it's important to understand that whilst it has appeared to me to very convenient for a number of these individuals to identify myself or Mr Bermingham as being solely responsible for instigating their activities the fact of the matter is that throughout the period in which I was

involved at a youth level within the faction that there was a systematic effort made to cultivate a group of very committed young people who were prepared to go out of their way to support ultimate beneficiaries, typically people who'd be elected to office, but often factional candidates for State Conference plebiscites and such like to establish influence within the Party itself. And in terms of creating that culture throughout the early 1990s at a youth level the faction would conduct retreats and getaways and camps and forums and social events and things where senior members of the Party in the faction would come and be special guests at beers after a workshop on something or other war stories would be passed which described the sorts of things that were done to pursue factional interests in terms of plebiscites ...

And I can think of a number of old war stories that were constantly told and sort of rehashed and used to exemplify how, you know, committed people would — and clever operators or whatever you want to call them would be able to succeed over the Left.

And later at T1730 the following exchange between Counsel Assisting and Powell is recorded:

Q. Yes?

A. Right. So there was a whole culture which people voluntarily and enthusiastically participated. To suggest that it was a simple case of one person or two people standing over people or whatever to encourage the behaviour I think is extremely misleading. And when you place before me this exhibit — I don't recall anything specific about this exhibit — and this is 121 — but I know that the environment that this took place in was one where people such as Shaun [Rohrlach] were active participants in the political process of the faction at the time and in that culture and it is incorrect for him to say that he did it on the basis that he was threatened to.

Q. Thank you. Were the Young Labor people then encouraged to think that it was quite all right to get up to these sort of capers——?

A. As I——

Q. ——is that what you're saying?

A. As I mentioned to you, the way that the culture was built around war stories created a legitimacy for those actions which is, 'This is what we used to do in our time and this is how we succeeded in our time.' It was almost a case of lessons being passed down in terms of what could be done, but also in terms of the — as I said, the ethical and moral benchmarks against which factional politics was fought.

## THE ALLEGED ALP 'MOLE' WITHIN THE AUSTRALIAN ELECTORAL COMMISSION

Before I complete this chapter I should make further reference to the allegation by Ehrmann that she was told by Powell that 'they had someone inside the Electoral Commission'. It will be recalled that Ehrmann had claimed that Powell had told her that they had a person inside the 'Electoral Commission' who assisted with false white cards.

I should at this stage explain further the term 'white cards'. After an enrolment application is accepted by the Australian Electoral Commission, the applicant receives a white card from that Commission. It appears from the evidence that such a white card is in the name of a particular applicant following an enrolment application lodged by that applicant with the Australian Electoral Commission. If the white card is received before the closing date fixed for the plebiscite, it may be regarded as proof of enrolment and produced to satisfy the General Returning Officer, and if necessary the scrutineer at the count to prove that notwithstanding the absence of that person's name from the electoral roll, the card itself is proof that the enrolment application had been lodged within the time limits and that the person named on the card was eligible to vote. The white card appears no longer to have any great significance since the introduction of computerised rolls.

When Budd gave evidence she said that she had seen forged enrolment cards that emanated from the Australian Electoral Commission (T456). She said she first

became aware of forged enrolment cards in 1993 during the ballot for East Brisbane. She said she saw what was obviously not a genuine card as she checked it against a valid one — she believed there were two forged cards (T457). She did not know of a ‘mole’ in the Australian Electoral Commission.

Lindesay Jones, the former Assistant Secretary of the ALP, did not believe that there was a ‘mole’, but he also had seen a forged white card.

Ehrmann’s was the only evidence that a ‘mole’ existed. Powell and Bermingham denied that they had a person working in that Commission. Powell denied the conversation which Ehrmann claimed they had. Powell and Bermingham denied any fraud involving white cards and Powell said he had only heard of the term shortly before giving evidence.

In these circumstances the Inquiry was unable to establish that there was a mole.

## THE 1996 PLEBISCITE FOR THE STATE ELECTORATE OF TOWNSVILLE

The term of reference relevant to this chapter is:

1. To conduct an investigation into any alleged official misconduct by way of conduct which constitutes or could constitute a criminal offence or offences: ...
  - (a) affecting the electoral roll relevant to the conduct in 1996 of a plebiscite within the Australian Labor Party selecting its candidate for the state electorate of Townsville; ...

### BACKGROUND

The plebiscite for the ALP to select a candidate for the state electorate of Townsville occurred in the latter part of 1996. Nomination for candidates opened on 14 October 1996.

To be eligible to vote at the plebiscite a person had to satisfy the following conditions:

- enrolment with the Australian Electoral Commission within the electorate of Townsville on or before 14 October 1996
- registration as a member of the ALP for at least six months
- attendance at one or more ALP branch meetings.

Nominations for candidates closed on 1 November 1996. One candidate was Anthony John Mooney, who said in evidence before me that he was supported by the AWU faction, although never formally joining any faction of the ALP (T303/45). At the time of the plebiscite he was Mayor of the Townsville City Council. The other candidate was Michael Francis Reynolds, who described himself in evidence before me as a member of the Queensland Left faction (T412/33).

The ballots for the plebiscite were sent from Brisbane on 13 November 1996. The sending of the ballots was under the control of Joan Budd (the General Returning Officer of the ALP). ALP Administrative Committee Meeting Minutes of 11 November 1996 indicate that the ballots had not issued by the time of the meeting. The minutes show that the list of voters was difficult to finalise due to the large number of rulings required as a result of a large number of additions and deletions, which had been requested by both candidates.

On 29 November 1996 the plebiscite ballot closed and on 2 December 1996 the Electoral College met in Brisbane. Reynolds was nominated as the ALP candidate. According to Reynolds, 203 persons voted at the plebiscite, 121 for him and the remaining 82 for Mooney.

All of Andrew James Kehoe's convictions related to forged enrolments for this plebiscite.

According to material placed before the District Court by Ehrmann at her sentence:

Out of all of the above charges relating to people enrolled:

- (a) three voted in Townsville for Mooney;
- (b) three voted in Townsville for Reynolds;
- (c) four voted in Thuringowa.

The rest were not eligible to vote in a preselection ballot for Townsville or Thuringowa or did not vote at all. It is appropriate to consider separately the evidence concerning each of the two candidates and I shall deal first with the evidence concerning Mooney.

## **KEHOE'S EVIDENCE AGAINST MOONEY**

### **The forgeries of Kehoe**

The Inquiry heard evidence against Mooney, the main evidence coming from Kehoe. Kehoe first gave evidence to the Inquiry on 6 October 2000 — he followed Mooney into the witness box. He returned to give further evidence on 12, 13, 25 and 26 October 2000.

Mooney gave evidence to the Inquiry on two occasions — first on 6 October 2000 and next on 23 November 2000. He denied any knowledge of any criminal conduct by Kehoe.

As I have already mentioned, Kehoe on 24 July 1997 had pleaded guilty to 10 charges (under the CE Act) of forging electoral enrolment forms, these offences apparently having been committed in August, September and October 1996. The names of the persons whose forms he had forged were:

- Christopher Gotch (Exhibit 21 is a copy of the form)
- Leeah Bakker (Exhibit 14 is a copy of the form)
- Anthony Foy (Exhibit 20 is a copy of the form)
- Merv Kimber (Exhibit 23 is a copy of the form)
- Helen Bond (Exhibit 15 is a copy of the form)
- Daniel Mark Chambers (Exhibit 18 is a copy of the form)
- Matthew Crowley (Exhibit 19 is a copy of the form)
- Robyn O'Shea (Exhibit 28 is a copy of the form)
- Jamie Schmidt (Exhibit 30 is a copy of the form)
- Jaymin Langdon (Exhibit 25 is a copy of the form)

I have set out the above details because the names will recur in the following pages.

At the time of Kehoe's pleas of guilty, Crown Counsel told the Stipendiary Magistrate that nine of the above ten persons were moved by the enrolment forms from different state electoral districts into the Townsville electorate district and one was similarly moved from the Australian Capital Territory to the Townsville electorate, and that Kehoe knowingly changed the enrolments of all ten persons on the roll. A number of the forms were lodged with the Australian Electoral Commission too late to enable certain enrolled persons to vote in the plebiscite. All the ten enrolments were false and fraudulent (i.e. their electoral addresses were moved without the knowledge or consent of the enrolled persons).

The Stipendiary Magistrate was also told that a letter sent by Kehoe on 6 November 1996 to the Australian Electoral Commission in Townsville (Exhibit 71) said that Kehoe was then the current President of the Townsville Electorate Executive Committee for the ALP.

### **Kehoe implicates Mooney in the forgeries**

In the witness box at this Inquiry Kehoe gave direct evidence implicating Mooney. If accepted by a jury, this evidence is capable of proving that Mooney aided Kehoe in committing some or all of these offences by encouraging him to make the false and fraudulent enrolments. In their written submissions Counsel Assisting the CJC have set out relevant passages from Kehoe's evidence given on 12 October 2000. Counsel rely on these passages to justify their submissions that there is evidence capable of proving that Mooney knew that Kehoe was engaging in forgery and encouraged the forgery, and, in the alternative, encouraged Kehoe to utter the forged enrolment forms by

lodging them in the Townsville office of the Australian Electoral Commission. The direct evidence from Kehoe on which Counsel Assisting rely appears within pages 732 to 752 of the transcript of evidence given to the Inquiry and exhibits therein referred to.

I do not propose to set out that evidence at length. These pages contain evidence from Kehoe when being examined by Mr Hanson. In summary, Kehoe told me:

- (a) of a meeting with Mooney where a list of 'Likleys [*sic*]' and 'Solids' on three sheets was prepared for Mooney and Reynolds. The three sheets are:
  - Exhibit 33B (see Attachment 2) (this document was also referred to as Exhibit 33 and Exhibit 33A at different stages of the Inquiry)
  - Exhibit 34B (see Attachment 3) (this document was also referred to as Exhibit 34 and Exhibit 34A at different stages of the Inquiry)
  - Exhibit 35B (see Attachment 4) (this document was also referred to as Exhibit 35 and Exhibit 35A at different stages of the Inquiry)
- (b) of a second meeting with Mooney to which Mooney had brought a document which became Exhibit 13B (see Attachment 5) (this document was also referred to as Exhibit 13 and 13A at different stages of the Inquiry) and Kehoe had brought a document which Kehoe called 'Document A', but which became Exhibit 13C (see Attachment 6)
- (c) Exhibit 13B (Attachment 5) when originally brought to the second meeting by Mooney consisted only of a typewritten list of names in three columns, of which one was headed 'Solid' and the other two 'Likely'
- (d) Exhibit 13C (Attachment 6) was a typed list of names which Kehoe had prepared headed 'MOONEY SOLID &', towards the end of which were 15 typewritten names below the word 'TRANS' — TRANS being written by Kehoe in ink and meaning 'TRANSFER'
- (e) that he and Mooney discussed their lists including the 15 names under 'TRANS' and if these 15 names could be moved into the Townsville electorate without their knowledge
- (f) that he and Mooney also discussed a number of names on Exhibit 13C (Attachment 6) above the word 'TRANS' and enrolling or moving these persons without their knowledge
- (g) that of the names above 'TRANS' Kehoe had pleaded guilty to falsely enrolling Daniel Chambers, Matthew Crowley, Jaymin Langdon and Jamie Schmidt in the Townsville electorate (the reference to 'false enrolling' equated to 'false enrolling by forgery')
- (h) that of the names below 'TRANS' Kehoe had pleaded guilty to falsely enrolling Anthony Foy, Helen Bond and Chris Gotch in the Townsville electorate
- (i) that on Exhibit 13B (Attachment 5) after some discussion at this second meeting Mooney had written the following names:
  - Kimber, Merv
  - Belen, Edith
  - Butler, Alan
  - Butler, Beth
  - Wilson, Steve
  - Brown, Kerrie
  - Keper, Pat
  - Keper, Ernie(Apart from Kimber's name, the remaining seven names appear in the same order in Exhibit 13C (Attachment 6) above the word 'TRANS'.)
- (j) that at this second meeting a further list was created and it was in Mooney's handwriting — this list, which became Exhibit 13D (see Attachment 7 and Attachment 7A), contained seven names, three of which Langdon,



D. McDonald and Chambers had words and figures 2/58 Cook or 2/58 Cook Street, North Ward, written beside them and was written on the back of a photocopy of an advertisement for a 1996 Melbourne Cup Charity Luncheon (see Attachment 7A)

- (k) that he and Mooney decided at this second meeting that Chambers would be moved to 2/58 Cook Street and he told Mooney that Chambers would be falsely enrolled without his consent at 2/58 Cook Street
- (l) that there was a follow-up meeting to the second meeting, this follow-up meeting being at Mooney's office at Townsville City Council Chambers;
- (m) that prior to attending this follow-up meeting, Kehoe had called at the office of Geoff Smith (the sitting MLA for Townsville and member of the ALP) to look at the most up-to-date electoral roll
- (n) that at that office he found an envelope waiting for him and inside the envelope was a document which after the addition of names numbered 19 to 25 became Exhibit 67 (see Attachment 8)
- (o) that when he first saw this document it contained 18 names numbered 1 to 18 written on it in Mooney's handwriting
- (p) that at Smith's office he, Kehoe, added to the list of names by writing seven more names and numbering them 19 to 25
- (q) that while at Smith's office he, Kehoe, went through the electoral roll and checked some of his enrolment forms 'false and legitimate' against the electoral roll; whilst there, Kerrie-Ann Brown called in to have her change of enrolment form attended to; Kehoe attended to this (he relied in part on the date on her enrolment form (Exhibit 17) — 9 October 1996 — to fix the date on which he went to Mooney's office for this follow-up meeting)
- (r) that he attended Mooney's office on the same day and Mooney himself had another list which was a copy of the list that he had picked up from Geoff Smith's office containing the names 1 to 18
- (s) that at Mooney's office he and Mooney discussed the list of names (Exhibit 67) (Attachment 8) — '1 to 25 were names that had been discussed that had to be enrolled legally or illegally into the Townsville electorate before the cut-off date for the plebiscite';
- (t) that 'then we proceeded to go through each person and I showed him the enrolment form that was filled out for them and discussed as to where they were going to be — the address — and he wrote down the addresses next to the names on his copy';
- (u) that he told Mooney in order to let him know that some of the names on Exhibit 67 (Attachment 8) were to be falsely moved and that 'each individual one was checked off' — 'against the electoral roll, and the party record';
- (v) that there was a discussion about Kimber 'number 18';
- (w) that a document, which became Exhibit 68 (Attachment 9), was discussed with Mooney
- (x) that all of Exhibit 68 (Attachment 9) was in his (Kehoe's) handwriting
- (y) that Mooney said, 'That he had some names from Lee Bermingham and he needed addresses for them'; that Mooney read out the names of Pamela Hirning, Amanda Hirning, Rodney Whitehead and Jenny Lynas and he, Kehoe, wrote those names down
- (z) that Mooney 'asked me for what addresses they could be put at and I gave him the addresses for 11/33 The Strand for two of them' — for Rodney Whitehead, 6 Stanton Crescent, North Ward, and for Jenny Lynas, 18/23 Gregory Street, North Ward
  - (aa) that he also gave Mooney post office box numbers that could be used
  - (ab) that he saw Mooney make a note of the addresses that he, Kehoe, had given Mooney;

- (ac) on being referred to the name 'D. Lunney, 17 Melton Terrace' appearing on Exhibit 68, he said he believed that information was given to him at the same time by Mooney;
- (ad) that he (Kehoe) did not give 'the name of 17 Melton Terrace' to Mooney.

I will interpolate briefly here to make some comment on the lists said by Kehoe to have been discussed with Mooney. If Kehoe were engaged in 'moving' people with Mooney's agreement from electorates outside Townsville into the Townsville electorate, then one would expect to find the names of those people on lists prepared by Kehoe and said by Kehoe to have been discussed at the different meetings with Mooney. I have set out earlier the names of the 10 persons whose electoral enrolment forms Kehoe pleaded guilty to forging.

I set out in tabular form now those same names and whether or not they appear in Exhibit 13C (Attachment 6) and Exhibit 67 (Attachment 8).

NAMES	EXHIBIT 67 (Attachment 8)	EXHIBIT 13C (Attachment 6)
Gotch	Yes (No. 16)	Yes (below the word 'TRANS')
Bakker	Yes (No. 21)	No
Foy	Yes (No. 9)	Yes (below the word 'TRANS')
Kimber	Yes (No. 18)	No
Bond	Yes (No. 10)	Yes (below the word 'TRANS')
Chambers	Yes (No. 3)	Yes (above the word 'TRANS')
Crowley	Yes (No. 4)	Yes (above the word 'TRANS')
O'Shea	No (See T1318)	No
Schmidt	Yes (No. 7)	Yes (above the word 'TRANS')
Langdon	Yes (No. 6)	Yes (above the word 'TRANS')

It is true to say that in Exhibit 13B (Attachment 5), which, according to Kehoe, was the list Mooney presented to him at the second meeting, three only of the people named in Kehoe's 10 charges are named. They are D. Chambers, J. Langdon and J. Schmidt. By way of contrast, all bar one (O'Shea) appear in Exhibit 13C (Attachment 6), which Kehoe said was his list presented and discussed at the same meeting.

Counsel Assisting submits that the evidence of Kehoe, which I have summarised above, justifies my recommending that the evidence be referred to the Commonwealth Director of Public Prosecutions with a view to the commencement of such prosecution proceedings against Mooney as the Director considers warranted.

Mr J S Douglas, QC, who appeared for Mooney has made lengthy written submissions to the effect that the matter concerning Mooney should not be referred to the Commonwealth Director of Public Prosecutions and I shall come to his submissions.

### **The need to assess Kehoe's credibility and the test to be applied**

Consideration of the submissions from Counsel Assisting and from Mr Douglas require me to form some opinion about Kehoe's credibility. In the course of their written submissions Counsel Assisting said:

It would be wrong to refer a matter which rested upon the evidence of a witness who had been thoroughly discredited.

And went on to say:

However, in our submission, it cannot be said of Kehoe that he was thoroughly discredited.

I propose to deal with these submissions of Counsel in respect of this Mooney matter on the following basis:

1. I shall consider evidence which I consider would be admissible in a prosecution case against Mooney on a trial.
2. I take account of Mooney's evidence before the Inquiry, but recognise that if Mooney does go to trial he may decide not to give evidence.
3. If I conclude that Kehoe's evidence implicating Mooney in any one or more of the admitted forgeries and the uttering of any one or more of the forged enrolments is so inherently incredible that no reasonable person could accept it as true then I shall not recommend that the matter of Mooney be referred to the Commonwealth Director of Public Prosecutions. I add that this test that I propose to apply differs from that referred to by Counsel Assisting — namely, was Kehoe 'thoroughly discredited as a witness'. I recognise that there may be different views as to the appropriate test to apply — the Criminal Justice Act gives no guidance at all.

The test that I have applied was stated in *Haw Tua Tau v. Public Prosecutor* 1982 AC 136 where the Judicial Committee of the Privy Council had granted special leave to appeal from a decision of the Court of Criminal Appeal of Singapore. Haw had been convicted of murder. The Board was concerned with a question of statutory interpretation and in the course of doing that found it necessary to refer to section 188(1) of the Criminal Procedure Code of Singapore:

188(1) When the case for the prosecution has concluded the Court if it finds that no case against the accused has been made out which if unrebutted would warrant his conviction, shall record an order of acquittal or if it does not so find shall call on the accused to enter on his defence.

Section 188(1) has no equivalent in Queensland law.

Lord Diplock in delivering the Board's advice said:

The crucial words in section 188(1) are the words "*if unrebutted*" which make the question that the court has to ask itself a purely hypothetical one. The prosecution makes out a case against the accused by adducing evidence of primary facts. It is to such evidence that the words "*if unrebutted*" refer. What they mean is that for the purpose of reaching the decision called for by section 188(1) the court must act on the presumptions (a) that all such evidence of primary fact is true unless it is inherently so incredible that no reasonable person would accept it as being true; and (b) that there will be nothing to displace those inferences as to further facts or to the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of any further explanation. Whoever has the function of deciding facts on the trial of a criminal offence should keep an open mind about the veracity and accuracy of recollection of any individual witness whether called for the prosecution or the defence until after all the evidence to be tendered in the case on behalf of either side has been heard and it is possible to assess to what extent (if any) that witness's evidence has been confirmed, explained or contradicted by the evidence of other witnesses.

Lord Diplock went on:

The proper attitude of mind that the decider of fact ought to adopt towards the prosecution's evidence at the conclusion of the prosecution's case is most easily identified by considering a criminal trial before a judge and jury ... Here the decision making function is divided; questions of law are for the judge, questions of fact are for the jury. It is well established that in a jury trial at the conclusion of the prosecution's case it is the judge's function to decide for himself whether evidence has been adduced which "**if it were to be accepted by the jury as accurate**" would establish such essential elements in the alleged offence: but what are the essential elements in any criminal offence is a question of law. If there is no evidence (or only evidence that is so inherently incredible that no reasonable person could accept it as being true) to prove any one or more of those essential elements it is the judge's duty to direct an acquittal for it is only upon evidence that juries are entitled to convict; but, if there is **some** evidence the Judge must let the case go on ... [my emphasis]

In *R v. Galbraith* (1981) 1 WLR 1039 at 1042, Lord Lane CJ, in giving the judgment of the Court of Appeal in dealing with the question how a judge at a criminal trial should

approach a submission of 'no case', said:

- (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The Judge will of course stop the case.
- (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
  - (a) Where the Judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
  - (b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty then the Judge should allow the matter to be tried by the jury.

In *Doney and the Queen* (1990) 171 CLR 207, the High Court of Australia considered the above passage from Galbraith and at page 214 said:

the purpose and the genius of the jury system is that it allows for the ordinary experiences of ordinary people to be brought to bear in the determination of factual matters. It is fundamental to that purpose that the jury be allowed to determine, by inference from its collective experience of ordinary affairs, whether and, in the case of conflict, what evidence is truthful. That means that not only is proposition 2(b) in Galbraith correct but, so far as it refers to 'inconsistent' evidence proposition 2(a) cannot be accepted.

The High Court went on (at pages 214–215):

The question whether, in the words used in Galbraith, evidence has a 'tenuous character' or an 'inherent weakness or vagueness' may raise but is not restricted to the question whether the evidence is truthful ... if there is evidence (even if tenuous or inherently weak or vague) which can be taken into account by the jury in its deliberations and that evidence is capable of supporting a verdict of guilty, the matter must be left to the jury for its decision. Or, to put the matter in more usual terms, a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty.

The High Court then observed:

... neither the power of a Court of Criminal Appeal to set aside a verdict that is unsafe or unsatisfactory... nor the inherent power of a court to prevent an abuse of process ... provides any basis for enlarging the powers of a trial judge at the expense of the traditional jury function. The power of a court of criminal appeal to set aside a verdict on the ground that it is unsafe or unsatisfactory like other appellate powers is supervisory in nature. Its application to the fact-finding function of a jury does not involve an interference with the traditional division of functions between judge and jury in a criminal trial ...

I add that although, as a general rule, I do not propose to make any findings on any part of the evidence, I am required to report to the CJC. In so doing, I consider recommending parts of this report be sent to either the Commonwealth or Queensland Director of Public Prosecutions or other appropriate prosecuting authority with a view to such prosecution proceedings as the Director of Public Prosecutions or other authority considers warranted (section 33(2A)(a) CJ Act).

Leaving aside the issue of Kehoe's creditworthiness and for present purposes ignoring Mooney's evidence, the evidence of Kehoe to which Counsel Assisting point and which I have earlier summarised, on its face, is evidence capable of making Mooney a party to the offences of forgery and/or uttering. Even if that evidence is tenuous or inherently weak or vague it must be left to a jury for its decision (see *Doney* [ante]). I add that, apart from Kehoe's evidence, there is evidence to which Counsel Assisting point as being capable of confirming Kehoe's evidence against Mooney. I refer particularly to the evidence of Lynnae Dawson, Kehoe's former wife and to the evidence of James O'Donnell. I shall later come to their evidence.

At the end of the day, if I conclude that Kehoe's evidence implicating Mooney is such that it is so inherently incredible that no reasonable person could accept it as being true, that will be the end of the matter and there will be no referral to the Commonwealth Director of Public Prosecutions. If I do not reach such a conclusion because there are disputed matters of fact concerning Mooney's alleged implication in Kehoe's forgeries and/or utterings, then, subject to any determination that may be made by the Commonwealth Director of Public Prosecutions, those matters are best left for resolution by a jury at a criminal trial.

## Assessing Kehoe's credibility

Mr Douglas in his submissions places Kehoe's creditworthiness squarely in issue. As I have stated, the question I have to decide is whether, to use Lord Diplock's words, Kehoe's evidence is so inherently incredible that no reasonable person could accept it as being true.

The evidence at the Inquiry showed that in a number of areas, and particularly concerning contemporaneous documents — Exhibits 13B (Attachment 5), 13C (Attachment 6), 13D (Attachment 7) and 67 (Attachment 8) — there were disagreements on issues of fact between Mooney and Kehoe. One issue is whether or not these exhibits were simply lists of Kehoe's supporters and nothing more. Mr Douglas contends that is all they were. Kehoe says to the contrary. Normally such disputed issues of fact are resolved by a fact-finding tribunal — in a criminal trial that tribunal is usually the jury. However, although Mr Douglas accepts that disputed matters of fact are resolved in this way, he urges upon me that, in effect, Kehoe's evidence is so inherently incredible that no reasonable person could accept it as true. Thus, he submits, that I should come to that same view and not recommend referral of Mooney's matter to the Commonwealth Director of Public Prosecutions.

Mr Douglas in submitting that Kehoe's evidence is so inherently incredible has attacked Kehoe's credibility in a number of specific areas including in relation to the contemporaneous documentation referred to above:

- (i) Kehoe — the self-confessed forger.
- (ii) The inconsistencies in Kehoe's earlier accounts.
- (iii) The circumstances of Kehoe first implicating Mooney.
- (iv) Kehoe's evidence concerning the date of the first meeting between Kehoe and Mooney.
- (v) The evidence concerning Exhibit 13B (Attachment 5) and Exhibit 13C (Attachment 6).
- (vi) The evidence concerning Exhibit 13D (Attachment 7).
- (vii) The evidence concerning Exhibit 67 (Attachment 8).
- (viii) The evidence concerning Exhibit 68 (Attachment 9).
- (ix) The evidence concerning Exhibit 71 and the contemporaneous documents generally.
- (x) The evidence concerning Kehoe's falling out with Mooney.
- (xi) The inconsistencies between Kehoe's evidence and that of other witnesses.
- (xii) The evidence concerning Kehoe's visit to the Mayor's office, said by Kehoe to have been on 9 October 1996.
- (xiii) The inconsistencies in Kehoe's evidence on peripheral matters.
- (xiv) Kehoe's motive to lie.
- (xv) The evidence concerning the Kimber forgery.
- (xvi) The evidence concerning the telephone records.

The above list is not exhaustive.

I will now address the above 16 matters in turn. I should say that there is some overlap between the issues. In addressing them, I will revisit in greater detail Kehoe's evidence, which I have already referred to in summary form.

**(i) Kehoe — the self-confessed forger**

Mr Douglas submits that Kehoe is a self-confessed forger who changed his evidence to suit himself and whose evidence on oath before this Inquiry was itself inconsistent and demonstrably untruthful from one day to the next and, further, that Kehoe is not a witness whom any prosecuting authority could put before a jury as a witness of truth.

It is true that Kehoe has been convicted of offences of dishonesty, namely forgery, and because of that his evidence at a trial will be closely scrutinised by a jury. But it does not follow that the tribunal of fact must therefore reject his evidence implicating Mooney in the offences of forgery and/or uttering. (There is no evidence to suggest that before his forgery convictions Kehoe had any criminal history.)

In addition, on Kehoe's evidence he and Mooney were accomplices in the offences of uttering and forgery. Although the Criminal Code of Queensland has abolished the need at trial for a judicial warning in respect of evidence of an accomplice, nevertheless I shall assume that if there were a trial of Mooney such a warning would be given. That warning would emphasise the need for the jury to exercise caution when deciding whether or not to accept and act on Kehoe's evidence implicating Mooney.

**(ii) The inconsistencies in Kehoe's earlier accounts**

Mr Douglas has submitted that generally Kehoe's oral evidence to the Inquiry is inconsistent with earlier oral evidence he gave not only to this Inquiry but in earlier investigations, including investigations made by the Australian Federal Police.

As already mentioned, Kehoe gave oral evidence to this Inquiry on 6 October 2000. On 29 September 2000 he had been interviewed by officers of the CJC and that interview was tape recorded and transcribed. I shall later mention aspects of this interview.

Kehoe re-entered the witness box on 12 October 2000 but before doing so he had been further interviewed by CJC officers. These interviews occurred on 9, 10 and 11 October 2000 and again were tape recorded and transcribed — see Exhibit 155 for a transcript of the interview on 9 October 2000, Exhibit 156 for a transcript of the interview on 10 October 2000, and Exhibit 157 for a transcript of the interview on 11 October 2000.

It is true to say that the evidence Kehoe gave on 6 October 2000 was in a number of ways inconsistent with evidence he gave after he returned to the witness box on 12 October 2000. For example, on 6 October 2000 he told Mr Hanson that he was recruiting people into the ALP as new members (T363), but he denied that he reported to Mooney the result of his recruitment efforts. He also initially denied having described himself as Mooney's numbers man (T362).

When he returned to the witness box on 12 October 2000 his evidence began as follows:

Mr Hanson:

Q. Mr Kehoe since you were here last have you had the opportunity to look at a large number of documents which you had not seen for some time?

A. Yes I have, yes.

Q. Did those documents come from a number of sources? Were some of them shown to you by the CJC?

A. That's correct.

Q. And were some of them retrieved by yourself from your legal — former legal advisers being documents that were used at your criminal proceedings?

A. That's correct yes.

- Q. Some time ago?
- A. Yes that's correct.
- Q. And have you spent some time now going through the documents that you received from those two sources?
- A. Yes I have.
- Q. And how has that affected your memory and your understanding of the matters that you've been questioned about in recent times?
- A. Greatly. I've been able to place a lot more recollection of the events that occurred in 1996 in relation to looking at these documents and corresponding events.
- Q. I'll show you a bundle of documents here now which appear to be originals and you've only seen these originals this morning have you?
- A. That's correct.
- Q. But you've been looking at photocopies over the last couple of days?
- A. That's correct.
- Q. Now if we start again are you able to put things into chronological order dealing with some of the documents that have been tendered before the Court already?
- A. Yes. (T724)
- Q. Maybe we'll have the bundle. Now is it the case that you sat down with Mr Mooney to work out who would support him and would not at the upcoming plebiscite?
- A. That's correct, I believe it was some time in September that there was talk of a plebiscite to happen for the state seat of Townsville. I met with Tony Mooney and I discussed with him a preliminary list of names that were made up to who would be more likely to support him and who would be likely to support Reynolds.
- Q. And were there a number of meetings?
- A. There were a number of meetings yes.
- Q. And were there lists drawn up on a number of occasions?
- A. Yes there were.
- Q. Of the possible supporters and the opponents supporters?
- A. That's correct yes. (T725)

In summary, Kehoe returned to the witness box on 12 October 2000 when he told me that since he had last given evidence he had had the opportunity of looking at a large number of documents he had not seen for some time, including some used at his criminal proceedings, and that his memory and understanding of matters about which he was earlier questioned had been 'greatly' affected. He told me that in January 1997 the Australian Federal Police had obtained from him some of the documents and that he had not kept copies of the documents.

Mr Douglas submitted that Kehoe's evidence that access to the documents revived his memory about Mooney's involvement is 'literally incredible'. He referred to parts of Kehoe's cross-examination where at (T792/12) Mr Douglas asked Kehoe:

- Q. You had the opportunity during the prosecution to which you pleaded guilty to implicate Mr Mooney if you wished to, I would suggest to you, on the version you are giving now?
- A. Yes, in the version I'm giving now, yes, I, yes.
- Q. And you had the opportunity if you had wished to, to make allegations against him on any occasion between then and now?
- A. Well, as I explained before up until probably September of 1998 there had been certain factors going on in my life in regards to my family and my child that have — and I don't think anybody would make the other decision — far preceded anything, anything else and it's taken a lot of time to deal with.
- Q. And you had the particular opportunity most recently on 29 September this year to make such allegations to the CJC investigators who interviewed you then?
- A. Yes and I had nothing to refresh my memory from that time. It was four years ago.

- Q. Well, let me suggest to you if what had happened had happened in the way you describe it?
- A. Yes.
- Q. You would have had a very clear recollection that should have been able to be brought back into your mind immediately? You wouldn't have needed the documents to make these assertions against Mr Mooney?
- A. Well, I tend to disagree with what you're saying because I, I know what I can remember and without having any recollection or a notebook or a diary or anything at all to record anything at all and not being able to go back there, and as I've already stated there's a fear of going to goal, you know, catch 22 and my memory was not as good without being able to account [sic] evidence or documents or records.
- Q. There's a big difference I would suggest to you between Mr Mooney being distressed with you because you couldn't provide him with the names of your supporters and Mr Mooney conniving with you to falsely enrol supporters. That's not something you need to look at documents to remember?
- A. I'm sorry.
- Q. You don't need to look at documents to remember if Mr Mooney has been conspiring with you to falsify the Electoral Roll. It's a lot different from somebody saying to you, 'Who are these supporters of yours, anyway?'
- A. Are you suggesting I didn't remember particular parts or I'm——
- Q. I'm suggesting to you that you didn't need to have your memory refreshed by documents. If this had happened it would stick in your mind like glue, it would be burnt into it?
- A. Well, I think I'm the one that can answer that in regards to know what I can remember and had remembered.
- Q. Let me read to you one of your answers from the interview of 29 September this year. The question is, 'Okay, so was what you're saying is, was it more or less expected of you that you would deliver support to Mooney?' The answer is, 'Not from — not well — I'm — I'm — look I'll be honest, if I could — if I could throw Mooney into the shit can I would but unfortunately if you got — if you've got some support you give it to the best of a bad bunch, whoever else is out there, and if I was to do that and have someone else know about it or be involved with other people in it — oh well — I — you know, as it happens, you know, we pleaded guilty to it but you'd have — you'd have other people involved. I guess to an extent you're sort of, ah — if — if — what — either dirty work was done — that has been done by yourself and, you know, on your own, it's mainly to deliver the votes'. Now you had the opportunity there to put him in — right away, didn't you, and you consciously said, 'No, he didn't do it, it was my fault'.
- A. Well, as I said to you before, without refreshing the memory of what I had here — what I've got here, it's very, very difficult to make claims and then have to stand up in Court and say that when I — I haven't got nothing to refresh my memory. If it's wrong, I'm in the same boat.

Some time later in cross-examination the following exchange occurred between Mr Douglas and Kehoe:

- Q. You've said anything from time to time through these proceedings, haven't you, and through the interviews and enquiries that have gone on associated with this matter?
- A. I can say that it's very difficult to recollect simply on memory of an event that was clouded with a number of other events but——
- Q. You've changed your — sorry?
- A. Excuse me. Far more important to me at that particular time and there was a certain fear in relation to what I was possibly able to say without actually having any corroborating evidence in front of me.
- Q. Even though you've said to numerous people starting at about the time you were prosecuted that if you could have dobbed somebody in or put somebody else in, you would have?
- A. Well, I think that's a pretty fair statement. I mean if — obviously if I've had something to corroborate — memories just don't stand up alone and if I'd gone and



said simply on memory I'd be in the same situation with you now.

- Q. And you have access to the documents that you now say have revived your memory during the whole of that period?
- A. I made a conversation — I made a telephone call to my barrister Mark Donnelly in Townsville on Tuesday morning asking him the whereabouts — if there was any further documents in relation to the brief of evidence that the Federal Police had taken against me. He advised me that he didn't. I also — he also advised me that he didn't believe that Arthur Browne & Associates who were instructing solicitors had a copy and that I would have to make a search myself and I——
- Q. And you told the Federal Police back at about the time of the prosecution that if you were able to point the finger at anybody else, you would have and that was at a time when Mr Donnelly was representing you on your charges and you would have had easy access to these documents?
- A. Sorry?
- Q. You say you have now revived your memory?
- A. Sorry, did you say that was when I was being charged by the Federal Police or was it six months later? (T825/55)

It is apparent from the extracts from cross-examination that I have quoted that Kehoe in his evidence gave reasons for his ability to recollect matters on his return to the witness box on 12 October 2000. These are matters which it may be thought should be left to a tribunal of fact to assess in determining Kehoe's creditworthiness. Of course, I have to assess Kehoe's creditworthiness. If I thought his evidence implicating Mooney was so inherently incredible that no reasonable person could accept it as being true, then I would not refer the matter to the Commonwealth Director of Public Prosecutions. I do not consider that this aspect of Kehoe's evidence is so inherently incredible that a reasonable person could not accept it as being true.

### **(iii) The circumstances of Kehoe first implicating Mooney**

Mr Douglas asked me especially to look at the evidence where Mooney was first implicated by Kehoe when considering the inconsistencies in Kehoe's accounts.

Mr Douglas asked me to contrast Kehoe's versions when he was first prosecuted (July 1997) through to and including several other interviews — interviews with the Australian Federal Police, the CJC, Exhibit 74 being the transcript of an interview with CJC officers on 29 September 2000, his evidence to the Inquiry on 6 October 2000 and further evidence he gave on and after 12 October 2000 when he gave evidence at this Inquiry and about which he was cross-examined. Mr Douglas also asked me to consider the cross-examination of Kehoe by Mr Mulholland on 25 October 2000 at pages 1130 to 1135 of the transcript.

Mr Douglas specifically pointed to a question and answer when Kehoe was interviewed by officers of the CJC on 29 September 2000:

- Q. Was there any direction by anyone in a political party for you to conduct these movements in this fashion?
- A. No, no — no, I can honestly say I mean, um, I'm very embarrassed to say but I'm, I mean, this is my own fault, that is why I pleaded guilty to it and at the time I pleaded guilty I had nothing to lose. If I could point the finger at anybody else I most certainly would have ...

In this answer Kehoe accepts sole blame for his illegal actions and does not implicate any other person.

Before I go further, I should say that there was no interview between the Australian Federal Police and Kehoe. I have a transcript of the proceedings when he pleaded guilty, but nothing is said there by his Counsel to implicate any other person in the matters to which he had pleaded guilty.

I have transcripts from the four tapes which comprise the interview of Kehoe by the CJC officers on 29 September 2000. Apart from the question and answer that I have just set out, there were passages in tape 2 at page 25 and tape 4 at page 15 which can

be interpreted to illustrate inconsistency between what Kehoe said at that time and the evidence that he gave to the Inquiry beginning on 12 October 2000. There was evidence, particularly in the passage from tape 4, in which Kehoe said there was no-one else involved in what he did.

As I have previously stated, there is also no doubt that there were inconsistencies between the evidence that Kehoe gave when in the witness box on 6 October 2000 and that which he gave after he returned on 12 October 2000.

These various inconsistencies are matters which certainly go to Kehoe's creditworthiness. There can be no doubt that if Mooney goes to trial on charges of forgery and/or uttering the jury will wish to hear evidence from Kehoe as to why the inconsistencies occurred. In the evidence before the Inquiry he said he was, in effect, looking for something to corroborate the evidence that he gave to this Inquiry. For instance, at (T825/55), Kehoe said:

I can say that its very difficult to recollect simply on memory of an event that was clouded with a number of other events but — far more important to me at that particular time and there was a certain fear in relation to what I was possibly able to say without actually having any corroborating evidence in front of me.

Bearing upon Kehoe's credibility in this particular regard is the evidence of his former wife — Lynnaïne Paula Dawson — and an associate of his — James O'Donnell. I will turn to what use can be made of this evidence and why a jury would be entitled to accept such explanations by Kehoe. Of course, the jury may also reject them. It follows that I do not consider Kehoe's evidence in this respect is so inherently incredible that no reasonable person could accept it as being true.

#### **Recent fabrication**

In my view the thrust of questioning of Kehoe by Mr Douglas and Mr Mulholland was to the effect that Kehoe's evidence from the time he returned to the witness box on 12 October 2000, in so far as it implicated Mooney in a criminal offence, was a recent fabrication.

The nature of the cross-examinations of Kehoe by Mr Douglas and Mr Mulholland concerning Kehoe's evidence given on 12 October 2000 and implicating Mooney in the offences of forgery and uttering is such that each cross-examination must be 'interpreted as containing the direct question, 'When did you first invent this story?' (See *Cross on Evidence*, paragraph 17305.)

In my view, the evidence of Dawson and O'Donnell would be admissible at a trial to rebut any such suggestion of recent fabrication. I now deal with their evidence.

#### **The evidence of Lynnaïne Paula Dawson**

Dawson gave oral evidence to the Inquiry on the 4 and 5 October. She said that she and Kehoe lived together as husband and wife in Townsville until 6 October 1996 on which date they separated, he moving out of the matrimonial home. Her evidence shows that she and Kehoe were the parents of a child born 20 July 1995 and that she and Kehoe divorced on 12 November 1997.

Dawson gave evidence concerning a meeting which she said she had with Kehoe in Townsville at the Rock Wall on the Strand across the road from the flat in which Kehoe was living after she and he separated. Her evidence to the Inquiry given on 4 October 2000 included:

Mr Hanson:

Q. He had a flat on the Strand?

A. He had a flat on the Strand and we had met outside of his flat. He insisted on going outside of his flat because he was scared that it would [be] bugged and that was his own words. We went to the rock wall adjacent — across the road from where he lived and we had a conversation. This was, as I said, after he'd already pleaded guilty and I don't know initially why we had met but the conversation went — may I refer to my notes, please?

Q. Did you make a note of this conversation?

- A. Yes, I did.
- Q. When did you note it?
- A. When?
- Q. Yes.
- A. In my diary on the day.
- Q. On the same day?
- A. Yes.
- Q. Yes, do you have it there, do you?
- A. Yes, I do. (T182/50)

The Chairman said:

The rules of evidence don't apply but it's made contemporaneously or reasonably contemporaneously. I see no reason why she can't refer to it for purposes of accuracy.

Mr Hanson then continued to question Dawson:

- Q. Why did you make this note, Ms Dawson?
- A. It seemed alarming to me that — it didn't make sense. He — we had — the conversation ensued and he said that he was concerned about — his words were he was 'terrified about this going further, going to an inquiry'. He said, 'I know what ex-coppers — what happened to ex-cops in prison'. He was terrified of going to gaol and he didn't want it to go any further than where it had gone and obviously I assumed that that's why he pleaded guilty because there was more to come out and he said that — I said, 'Well, what more?' I said, 'You've already pleaded guilty. You know it's all over'. He said, 'There's more.' And I said, 'Well, sort of, what more?' And he said — well, his tone changed and he said, 'There was word that you were going to go to the media'. And I said to him, 'Well, you stand to get more money, if that's what you're after, if you go to the media than me because you know more'. And he just said, no, he didn't want to. And I pushed the question and he said, 'Tony Mooney knows everything and he didn't want this to go any further'. And he said he wouldn't do Tony or anybody in. And I made a note of this in my diary at the time and I've kept that diary, that 1997 diary, it was the 3<sup>rd</sup> of — it was Sunday, 3 August.
- Q. Is that the diary note, is that a photocopy of the diary note that you're presently reading from?
- A. Yes, it is. (T183/17)

Mr Hanson:

I tender that, Mr Commissioner.

The photocopy of the diary note, dated 3 August 1997, became Exhibit 3. It reads:

SAW ANDY, R/WALL. HE SAYS TONY M. KNOWS E/THING, DOESN'T WANT THIS TO GO ANY FURTHER, TERRIFIED OF GOING TO JAIL (KNOWS WHAT HAPPENS TO EX-COPS IN PRISON). HE WILL NOT DOB TONY OR ANYBODY IN.

This entry appears as the only entry on 3 August 1997.

Mr Hanson asked Dawson:

- Q. Did you say — ask him why he was prepared to protect Tony?
- A. No, he didn't say that he was protecting Tony. They were my words. I said, 'Why?'
- Q. Yes, did you ask him?
- A. Yes, I did.
- Q. What did you say?
- A. I said to him —
- Q. Have you made some note of this also — have you also made some note of this?
- A. Yes, I have. (T184/19)

Chairman:

Q. When was the note made?

Mr Hanson:

Q. When did you make this note that you are now reading from?

A. It would have been not on the day because I always kept my diary with me because of my work agenda and obviously I've made the note as it happened or after I'd left. I would've made this note some time afterwards. I can't recall when but I had forgotten that I had already made a note in my diary. I can't recall how — it wouldn't have been that much longer.

Chairman:

Q. What do you mean that much, a week, two weeks, three weeks?

A. Possibly a few weeks and I remember then, oh, I thought I hadn't put this down in on to my notes that I had at home and by then I had forgotten that I had made a quick note in my diary at that point in time.

Mr Hanson:

Q. All right, I asked you did you say anything to him about protecting Tony?

A. Yes, I said 'I don't understand why you are protecting Tony after all his promises, using you and now he dumps you and Andy just kept saying 'no' and just avoiding the question.

Q. What does the reference to promises from Tony mean?

A. Promises Tony had on several occasions with myself present had stated that he wanted to go in to state politics and that he would let Andy be the next Mayor if he got into state politics.

Q. You heard Mr Mooney say that yourself, did you?

A. Yes, I did.

Q. He said it on more than one occasion?

A. That's correct.

Dawson's evidence that Kehoe told her he 'will not dob Tony or anyone in' is consistent with Kehoe's having told CJC officers and others that no-one else was involved in his forgery offence. I do not see any need to refer to other evidence from Dawson except to say that Dawson made a diary note concerning a visit by Mooney to the Kehoe's home on 6 October 1996 and to note further that she was cross-examined at some length by Mr Kimmins who then represented Kehoe.

Dawson's evidence as recorded in her diary note of 3 August 1997 is evidence which in my view would be admissible at any trial of Mooney on the charges of forgery and/or uttering, to rebut any suggestion that Kehoe's evidence given to this Inquiry after 6 October 2000 was, in so far as it implicates Mooney in the forgeries or any of them, and the utterings or any of them, a recent fabrication. If a tribunal of fact accepted Dawson's evidence concerning the conversation with Kehoe on 3 August 1997 as truthful and accurate, it shows that on that day Kehoe believed that Mooney 'knew everything' and Kehoe was not prepared to 'dob' him in and that, depending on the interpretation, either Kehoe or Mooney didn't want that fact to go any further. I point out that Dawson's evidence also showed that since her separation from Kehoe there had been a lot of animosity between the two of them 'to say the very least', that there had been a bitter custody dispute in the Family Court and as a result of that Kehoe had been awarded custody of their child and Kehoe had come to live with the child in Brisbane while she remained in Townsville (T215).

### **The evidence of James O'Donnell**

I come now to other evidence given to the Inquiry also admissible to rebut any suggestion that Kehoe's evidence after 6 October 2000 implicating Mooney in the forgeries and utterings was a recent fabrication. That is the oral evidence of O'Donnell who described himself as an industrial relations consultant. Mr O'Donnell gave his oral evidence on 26 October 2000.

In summary, O'Donnell's evidence disclosed:

- (a) In 1996 Mooney asked him for support knowing full well that O'Donnell's 'inclination was to the left' — that support was not only 'any personal vote because I actually live in the state seat of Townsville but also in the Electoral College of which at that time I was a member' (T1299).
- (b) Mooney told him 'he was having difficulty with members'.
- (c) Mooney sought his support because he wanted to win.
- (d) That in late 1996 he would have had 'possibly as many as a dozen' meetings with Mooney.
- (e) That in mid-98 at Kehoe's house he discussed Kehoe's 'fall out with Mooney' and that the nature of the argument between Kehoe and Mooney some time in late 1996 was 'something about the numbers' but he (O'Donnell) couldn't be more specific.
- (f) That Kehoe spoke of a discussion between him and Mooney in relation to fraudulent enrolments in the state seat of Townsville.
- (g) That he (O'Donnell) didn't ask for details but said 'Kehoe told me in mid-1998 that he had covered for Tony Mooney.' (T1302/42) and that 'Andy Kehoe felt that Tony Mooney had let him down, ostracised him and that Kehoe felt that he had covered' for Mooney.
- (h) That Kehoe did not explain to him that 'Mooney was aware of what Kehoe had been doing' and he (O'Donnell) 'didn't ask'.
- (i) That on 12 and 13 October 2000 Kehoe and O'Donnell had had discussions by telephone — that on the evening of 12 October 2000 Kehoe in Brisbane had rung O'Donnell in Townsville and spoken with him and on 13 October 2000 there was another telephone conversation.
- (j) That in the telephone conversation of 12 October 2000 Kehoe:
  - (i) had 'expressed some concern that he was like a shag on a rock'
  - (ii) had wanted O'Donnell's support by telling the truth
  - (iii) did not ask O'Donnell to lie for him and asked him to tell the truth.

The telephone conversation of 13 October 2000 was taped (unknown to O'Donnell). The tape recording of this conversation is Exhibit 151.

In my view, the evidence from O'Donnell that in mid-1998 Kehoe had told him that he, Kehoe, had covered for Mooney would be admissible at any trial of Mooney on charges of forgery or uttering to rebut any suggestion that Kehoe's evidence to the Inquiry given after 6 October 2000 in implicating Mooney in the forgeries and utterings was a recent fabrication.

Of course, if Mooney is charged with any counts of forgery and/or uttering and the matter goes to trial, it will be for the trial judge, after he or she has heard the evidence of Kehoe and his cross-examination, to decide whether or not the evidence of Dawson and O'Donnell should be admitted.

#### **(iv) Kehoe's evidence concerning the first meeting between Kehoe and Mooney**

In evidence given to the Inquiry on 12 October 2000, Kehoe told Mr Hanson (T727) that Exhibits 33B (Attachment 2), 34B (Attachment 3) and 35B (Attachment 4) comprising the first list that he compiled on the occasion of the first meeting with Mooney, were compiled at the same time, that Mooney was with him and when asked, 'Anybody else?', Kehoe replied, 'Not to my recollection.' He was asked, 'And where did this happen?', he answered, 'I believe it was at Tony Mooney's house on his back verandah.' When asked, 'And what is the source of these names we see written on these three exhibits?', he answered:

I believe from my recollection that the lists of names were made up from past branch listings in regards to the branches within the Townsville, Mundingburra areas

as people who were living in Townsville, members of other branches. So it would've been a compilation of a number of branch membership lists and the lists were made up as in the list with 'solids and likelys' for Mooney and also for Reynolds. (T727/20)

A little later he was asked:

So it includes people who live within the Townsville electorate and people who live in other electorates?

And he answered:

That's right.

The following then appeared:

Q. And what was the purpose of this list?

A. To begin to get a look at what sort of numbers Mooney would have and what sort of numbers Reynolds would have and to, I guess get the ball rolling.

Q. And could you put a time on this list?

A. As to a specific date it would have definitely been before 10 October. I would probably presume it would have been **early to mid-September**. (T727/420) [my emphasis]

Bermingham, in evidence given at the public hearing on 4 December 2000, said that he, Mooney and Kehoe were present at a meeting 'talking about the upcoming plebiscite' in Townsville. The meeting, he said, was at Tony Mooney's office and he thought it was in the early part of 1996 (T2561). He was then urged, 'Yes go on', and responded:

We sat down and I said that, you know, in a plebiscite you should have a list of your supporters who are the solids, the likelys. I also said that, you should have a column with unknowns and then you should have your opponents likelys and solids. You should reproduce this a couple of times through the plebiscite process so that you can work out you know what's going to happen in a plebiscite you know how well you're going. But the purposes of this meeting was to — just to make an initial estimation about what Mooney's likely support was and what Reynold's likely support was; initially whether it made a worthwhile contest for Tony Mooney to engage in.

Q. So you've written the headings in there?

A. I have yes.

Q. What about the names are any of those names in your handwriting?

A. No they are not.

Q. Were they written into those columns in your presence?

A. I think they were yes. (T2561)

The two documents that Bermingham said bear his handwriting are Exhibits 33B and 35B. The first of these is headed 'Mooney' and underneath are two columns, one headed 'Solids' and the other headed 'Likelys'. Bermingham's evidence is that he wrote these words at that meeting. Exhibit 35B is headed 'Renyolds' [sic] and again there are two columns one headed 'Likleys' [sic] and 'Solids'.

In his evidence (T2691/10) Bermingham agreed with a suggestion by Mr Douglas that this meeting was 'probably in April 1996.'

Mr Douglas submits, in effect, that, acting on Bermingham's evidence, the first meeting between Mooney and Kehoe probably took place much earlier than the time when Kehoe said it occurred. This is a matter that may be resolved by the tribunal of fact if Mooney is tried on charges of forgery and/or uttering. In the absence of some independent or contemporaneous evidence pointing to the date of the meeting, I really do not think the fact of this dispute as to the date of the meeting helps decide whether Kehoe's evidence implicating Mooney is so inherently incredible that a reasonable person could not accept it as being true.

**(v) The evidence concerning Exhibit 13B (Attachment 5) and Exhibit 13C (Attachment 6)**

By the time Kehoe began giving evidence on 12 October 2000 there were already in evidence a number of documents which, on Kehoe's evidence, concerned compilation of lists of persons considered to be 'solid' or 'likely' Mooney supporters. I refer particularly to Exhibit 13 (which was later renumbered 13A), which was headed 'Mooney' 'Solid' and 'Likely'. On 6 October 2000, this Exhibit was admitted (T318) during evidence by Mooney.

On 12 October 2000 Kehoe produced further documents, which he said he had obtained or seen since 6 October 2000. One of these was a document that he described as the original of Exhibit 13. At page 732 of the transcript the former Exhibit 13 became Exhibit 13A and the original became Exhibit 13B (see Attachment 5). As already indicated Exhibit 13B bears some names said to be in Mooney's handwriting. I shall later return to these names in more detail.

Kehoe's evidence on 12 October 2000 was that he and Mooney met on a date before 10 October 1996 (T731) and that at that meeting (which he said was the second meeting between him and Mooney) 'this list [Exhibit 13B] was presented by Tony Mooney'. He was asked, 'Did it have the handwritten names on it when it was presented to you by Mr Mooney?' Kehoe replied, 'I don't believe so. I actually had another list that I brought to the meeting myself and I'm referring to a 'document A' (T731). That 'document A' is now Exhibit 13C (see Attachment 6). Kehoe told me that he had typed this document 'A' (T732/43).

Mr Hanson asked:

Now you mention a document that you've marked A, you've put an A on this document in the last few days, have you?

Kehoe replied:

Yes, that's correct.

Q. So, what, you brought 'Document A' [Attachment 6] to this meeting?

A. That's correct.

Q. And Mr Mooney brought what we see as Exhibit 13 [Attachment 5] to the meeting?

A. That's correct.

Q. All right. Well tell us more about this meeting?

A. This meeting was a more comprehensive meeting to discuss likelihood of who was and wasn't on — in the Townsville electorate. It was also to discuss a number of other people and I believe that in the previous meeting Mooney had said that we needed more numbers because Karen had a lot of support. I made up a list, I'm referring to Document 'A', of who I believed to be people that could vote in Townsville — off the branch listing that we'd already done.

Kehoe went on:

And also I put a number of people underneath there with — there's the word 'TRANS'.

He said that that word stood for 'transfer':

and begins with Foy and goes down to Aldridge and on the right-hand side it goes Croft down to Mackenzie. (T732).

He said:

And we then compared the lists. We discussed other people and I believe that's when the words — the names Merv Kimber and Edith Belen, Butler, Butler, Wilson, Brown and the Keppers were placed on that list. (T732/50)

The typewritten names E Belen, Butler A, Butler B, Steve Wilson, Kerrie Brown, Pat Kepper, Ernie Kepper appear at the end of Exhibit 13C (Attachment 6) and immediately before the handwritten word 'TRANS'.

On the document Exhibit 13B (Attachment 5), which according to Kehoe was the list that Mooney brought to the meeting, the following names appear in handwriting, which, according to Kehoe, is Mooney's:

- Belen – Edith
- Butler – Alan
- Butler – Beth
- Wilson – Steve
- Brown – Kerrie
- Kepper – Pat
- Kepper – Ernie

These handwritten names appear on Exhibit 13B in the order set out above and immediately above the name 'Belen – Edith' appears the handwritten name 'Kimber Merv'. Kehoe says this name is also in Mooney's handwriting. Mooney agrees that his handwriting appears on the document (T1840).

Mr Douglas' submissions rely, in part, on evidence which Mooney gave at this Inquiry. If Mooney were to be tried on charges of forgery and/or uttering, there is no certainty that he would give sworn evidence at his trial. Nevertheless, I have taken into account Mooney's evidence to this Inquiry concerning Exhibit 13B, Exhibit 13C and generally. In evidence on 6 October 2000, Mooney just said he recalled seeing Exhibit 13B (Attachment 5), but could not be sure if he saw it in Kehoe's presence (T318). In evidence on 23 November 2000, i.e. on his second visit to the witness box, Mooney was asked:

Do you remember whether this document was discussed with Kehoe at this meeting in late September or early October?

He replied:

It's — it's possible that that discussion or that a discussion took place at that meeting. (T1814)

Mooney in his evidence to the Inquiry on this second occasion said he 'certainly had no recollection' of discussing Exhibit 13C (Attachment 6) with Kehoe (T1814).

Mr Douglas has submitted that Exhibit 13B (Attachment 5) is completely consistent with the conclusion that it is a list of possible supporters of Mooney in the plebiscite. He submits the handwritten additional names, which Mooney in evidence agreed were inserted by him are readily explicable as further persons whose names had to be checked as to their eligibility to vote in the plebiscite (see Mooney's evidence at T1840–1). Mr Douglas further submits that to the extent that any names written by Mooney on Exhibit 13B can be linked to some of the names typed in Exhibit 13C, this is completely consistent with Kehoe copying those names from Exhibit 13B when Kehoe subsequently created Exhibit 13C. Kehoe does not agree that he created Exhibit 13C subsequently. He says 13C was the list he himself typed and took to the meeting.

Mr Douglas has propounded that what he has submitted are reasonable explanations for Mooney to have written by hand the further names on Exhibit 13B, namely Merv Kimber, Edith Belen, Alan Butler, Beth Butler, Steve Wilson, Kerrie Brown, Pat Keper and Ernie Keper. As already mentioned, all these names, except for Kimber's, are handwritten on Exhibit 13B and are in exactly the same order as that in which those names appear typed in Exhibit 13C, the document which Kehoe says he typed and took to the second meeting.

In summary, in dealing with Exhibit 13B Mr Douglas's submission is that on any view of the evidence Mooney and Kehoe discussed who might support him in the plebiscite and the discussion of a list like Exhibit 13B was to be expected.

Further submissions from Mr Douglas concerning Exhibit 13C focus on the list of 15 typed names under the handwritten 'TRANS' and his cross-examination of Kehoe.



Exhibit 13C (Document A) (Attachment 6) contains immediately below the handwriting 'TRANS', the following 15 typewritten names:

- A Foy
- H Bond
- J Jones
- A McDonald
- G Hogg
- D Cutuli
- T Willshire
- L Clark
- L Bushach
- T Wode
- A Ole
- G Aldridge
- Rick Croft
- Chris Gotch
- Dave McKenzie

Three of the 15 names typed below 'TRANS' were the subject of three of Kehoe's 10 pleas of guilty to forgery. In cross-examination on 25 October 2000, Kehoe agreed that these 15 names were those of persons who were to be transferred into the Townsville electorate (T1139). However, I note that later (at T1156) Mr Douglas asked Kehoe:

And on your version people to be transferred in, in breach of the Electoral Act?

Kehoe answered:

Some of them. Some of them may have already been knocked off the list or had to have a form filled out for enrolment or had moved.

The questioning continued:

- Q. And do you say you had this idea off your own bat?
- A. I — there was always a general discussion about having to have more names and more people. That was the purpose of coming back for this second meeting because we had only just been through the branch listing.
- Q. I'm talking now about the group under the heading 'TRANS'
- A. Yes I introduced those to the second meeting.
- Q. As names to be illegally enrolled?
- A. To be looked at to move into the electorate of Townsville.
- Q. Now what conversation did you have with Mr Mooney about the possibility of illegally enrolling people and I now want you to draw on your training as a police officer to give me as best you can the words actually used.
- A. Well I can't recall the exact words we had Mr Douglas.
- Q. Well who raised the suggestion?
- A. There had been——
- Q. And what was the effect of the words used?
- A. In regards to — it probably started back at the first meeting. It's a process of checking off where the people lived against the roll and this meeting was certainly for that purpose and ...
- Q. Now just try to focus on my question.
- A. And well as——
- Q. Who raised the issue and what was the effect of the words used?

The Chairman interrupted:

Mr Douglas I think you should let him answer your question. He said——

Mr Douglas:

I was trying to focus him on the question

Chairman:

He said — to answer your question he said it — he started off 'it probably starts back at the first meeting'.

- A. As a result of the meetings I mean that was the general discussion I mean as the — as the first meeting was smaller then there was a larger number of names and then there was a working towards having a 'to do' list. I guess at the end and all the way through there it was a suggestion of having to move or get more people in otherwise he wouldn't have been able to win. And as it became more apparent as to where these people lived it was a general — it was a general discussion. I don't know how it was brought up. It was not argued with. It was general discussion that how we'd be able to move these people into the electorate and it was by — by false enrolment. As to the exact words I can't remember that.

Mr Douglas:

Q. Well what was your initial reaction to the suggestion of an illegality?

A. Sorry?

Q. What was your initial reaction to any suggestion of an illegality?

A. I don't recall if there was — I mean I was aware it had been going on for quite some time with other people in the Party. I — I was well aware that if Tony Mooney took a council seat that there would be a vacancy in the council — if he went to State Parliament. I didn't object to it because I wouldn't have done it otherwise.

Q. Well you were a police officer weren't you?

A. Yes that's correct.

Q. And as a police officer you've been sworn to uphold the law haven't you?

A. Yes that's correct.

Q. You are now turning yourself into a party apparatchik, a party activist?

A. Yes. (T1157/55)

Q. What you tell us you say at some stage — you can't define when — a suggestion of the legality [sic] illegality is made. You don't tell us whether it's by you or whether by Mr Mooney in the first place but you say it somehow appears in this process.

A. Well yes there was a lot of —

Q. Now what was your initial reaction as a former police officer sworn to uphold the law to this suggestion of illegality coming from the Mayor of Townsville for example?

A. Well I haven't objected to it because I've gone ahead and done it.

Q. I see. Are you suggesting that this is something with which you were familiar and something you were used to doing?

A. No I'm not.

Q. Are you suggesting that it was something that didn't create any alarm bells in your head because you were so familiar with it?

A. No I was concerned.

Q. Well if you were concerned can you please try to focus your mind and answer my question and give a clear answer as to when any suggestion of illegality was first raised and by whom?

A. Not — well I mean not being able to recall the actual detailed conversation it's very difficult whether I raised it with him or he asked can these people be moved. I mean I — look I don't — I can't recall the exact conversation Mr Douglas. There was a number of times, a number of meetings, some were to a certain extent lengthy or for a time. A lot was said in that period of time so I mean the general consensus was that there wasn't enough people to be able to vote for Tony Mooney and we had to move some people in.

Q. Police officers are trained in techniques of recalling and noting down evidence, aren't they?

- A. In a notebook.
- Q. Sorry?
- A. In notebooks.
- Q. Yes. And also recording in clear and precise detail who said what to whom and when?
- A. In a notebook.
- Q. And are also trained in techniques of trying to accurately recall evidence by remembering verbatim conversations, not the effect of them?
- A. No, because you use a police notebook to make — record the conversations made at the time and this is — these are effectively my notes.
- Q. But you know the technique, don't you?
- A. Well, some people have a very good memory, Mr Douglas, to record verbatim or read something and have a photographic memory and I don't. I don't have a photographic memory.
- Q. But you know that the proper training in recording and recalling evidence is to try your best to recall what words were used by whom, when, don't you?
- A. With notes.
- Q. And none of your evidence to date I'd suggest to you has deigned to give us that level of precision or detail.
- A. I would suggest if I was making notes at the time then Mr Mooney would've been particularly suspicious as to why.
- Q. And I suggest to you that if Mr Mooney had suggested something to you that was illegal it should've set off alarm bells in your head, put you into police mode and made sure that you recalled clearly what was said and when.
- A. Well——
- Q. You can't respond to that?
- A. Well I mean I was a willing party to the events so.
- Q. Now we can take it that after Exhibit 13C was prepared on your evidence you engaged in further analysis and checking of names?
- A. Yes.
- Q. From what you've told us you took part in cross checking which you referred to on page 773 of the transcript, do you recall that?
- A. Yes.
- Q. And eventually you produced Exhibit 67. Could the witness see that please.
- A. I think my handwriting's from 19 to 25.
- Q. And I'd suggest to you that the names numbered 1 to 18 are names you told Mr Mooney?
- A. They were a culmination of after the process we'd been going through previously.
- Q. So this is the final list after the checking?
- A. Of people that had to have something done about them yeah.

As to the 15 names under the handwritten 'TRANS', Mr Douglas took Kehoe through seven of the names — McDonald, Hogg, Cutuli, Wiltshire, Wode, Ole and McKenzie. Kehoe agreed that these seven were already registered and enrolled in the Townsville electorate (T1141/40). I add that none of these seven persons was the subject of Kehoe's forgery charges.

Kehoe took issue with Mr Douglas concerning whether or not some of these seven persons were correctly enrolled in the Townsville electorate; he claimed that certain persons in fact lived outside the Townsville electorate, although enrolled in that electorate.

The thrust of Mr Douglas's submissions on this point is this — the fact that the seven of the 15 names below 'TRANS' on Exhibit 13C were already on electoral rolls for the

Townsville electorate reduces the significance which Kehoe attaches to the 15 names and significantly weakens Kehoe's testimony that implicates Mooney in the forgeries and utterings.

Mr Douglas's submissions concerning Exhibit 13B and Exhibit 13C raise a number of issues including hypotheses concerning the circumstances in which the eight additional names came to appear on it in Mooney's handwriting. In my view, these submissions raise questions, the answers to which concern the circumstances in which Exhibits 13B and 13C came into being, what happened at the meeting or meetings between Kehoe and Mooney, and how the eight names in Mooney's handwriting (most of which appear on Exhibit 13C, which Kehoe says he prepared) came to appear on Exhibit 13B. There are, therefore, serious disagreements between Kehoe and Mooney concerning the provenance of Exhibit 13C particularly, and whether Exhibit 13C was discussed at that meeting. The resolutions of these questions are in my view matters to be determined by a tribunal of fact, i.e. the jury, if Mooney is indicted on charges of forgery and/or uttering.

Mr Douglas also submitted that Kehoe's evidence concerning Exhibits 13B and 13C is unsatisfactory in that they are vague. He said that Kehoe was given every opportunity to formulate in clear terms, relying on his experience as a police officer, what he alleges was said by Mooney about illegally enrolling people in the Townsville electorate but failed. In my view, this is a matter for comment before any tribunal of fact.

Mr Douglas, I should add, pointed also to what he submits was a clear conflict in Kehoe's evidence given at two separate stages in his visits to the witness box. First, on 12 October 2000 Mr Hanson asked Kehoe:

What's the significance of this 'TRANS' that's on Document 'A'? [later exhibit 13C] (T732/56)

- A. At the time there wasn't — it was apparent that there were a number of people that weren't, as cross checking off as a matter of the branch listing, the Electoral Roll and to actually where they were a number of people weren't actually living in the Townsville electorate.
- Q. You had an Electoral Roll for the Townsville electorate with you did you?
- A. Townsville electorate and Mundingburra electorate I believe and there possibly could have been a complete Herbert list but I don't — I can't vouch for how up to date the Herbert list was.

Later — on 25 October 2000 — Mr Douglas cross-examined Kehoe:

- Q. And this is what you say you were doing during the period leading up to early October; you were checking names to make sure whether they could be moved into the electorate or not? (T1152/17)
- A. It was a process of going to get the — I mean providing a list of names. As I said in the first meeting it was probably off a branch listing. The second meeting — the second meeting which you are talking about now 13C which is a more comprehensive list with possible people to be moved in and then as I said before I didn't have a Mundingburra roll or a Townsville roll to cross check with but I had an old roll and that was how we were able to go and do it then ...

A little later (T1155/45) Mr Douglas asked Kehoe:

Now correct me if I'm wrong but you would have had the opportunity presumably when typing this list [Exhibit 13C] to check the names against whatever records you had at the time such as electoral rolls or ALP membership lists?

- A. I — from my memory I had an old Herbert roll. As to — as to the date of it I don't know whether it was a previous — like a 1992 or a 93, 94 roll. Some of them would've been checked off, some of them wouldn't have been. That was the purpose of having the meetings to go through it. I mean it was a lot of work to do it by one person.

Mr Douglas has submitted that the evidence which Kehoe gave on 12 October 2000 and that given later on 25 October 2000 showed Kehoe saying the exact opposite concerning what rolls he had. His submission goes to Kehoe's creditworthiness and, in

my view, any difference in Kehoe's evidence is a matter which should be assessed by a tribunal of fact, i.e. a jury. Nevertheless, I take these passages in Kehoe's evidence into account when assessing Kehoe's overall creditworthiness.

I do not consider Kehoe's evidence concerning Exhibits 13B and 13C is so inherently incredible that a reasonable person could not accept it as true.

**(vi) The evidence concerning Exhibit 13D (Attachments 7 and 7A)**

This exhibit is a single sheet document, obviously a photocopy, one side of which contains a list of names (Attachment 7) and the other side which is a photocopy of an advertisement for a 1996 Melbourne Cup charity luncheon to be held on 5.11.1996 at Sheraton Breakwater Casino, Townsville (see Attachment 7A). Immediately below this advertisement appears in handwriting 'Bulletin SAT 19.10.96'. The relevance of Exhibit 13D for present purposes is whether it was created at a second meeting between Kehoe.

The list is in handwriting showing the names Boulton, Langdon, D McDonald, Bull, D. McKenzie, Chambers and A. Ole written one under the other, each name being separated by a horizontal line. Further writing appears beside or above five of the names. Of these names, Langdon and Chambers were subjects of Kehoe's forgery charges.

Kehoe, in speaking of Exhibit 13D said in evidence:

... there's also another document there that I've written marked Document 'B'.  
[Exhibit 13D] There was a number of names written down and I believe that to be Tony Mooney's handwriting. (T736/13)

Kehoe said that the handwriting on Exhibit 13D was placed there during what he called the second meeting with Mooney. Kehoe in his evidence said he believed the date of the second meeting which was with Mooney in the council office was 9 October 1996.

In cross-examination Mr Douglas had asked Kehoe:

- Q. Let me step forward a little bit now to 9 October you were able to pin down that date you thought in your previous evidence as an occasion when you had a meeting with Mr Mooney at his council office do you remember that?
- A. I believe that to be the date. However I remember that Kerrie Brown came to Geoff Smith's office and I completed her form at that particular time and I believe that to be the same day that I went to Tony Mooney's office.
- Q. And you thought that you went to Mr Mooney's office in the afternoon?
- A. I have a recollection of going to his office in the afternoon.
- Q. Are you able to pin down the time in the afternoon?
- A. As I said before I'm not — I mean obviously — I would probably say it would have been before 8 o'clock at night or 7 o'clock at night but
- Q. Sorry?
- A. I imagine it would've been before 7 or 8 o'clock at night ... (T1148/50)

The photocopy of Brown's enrolment form is in evidence (Exhibit 17) and shows that it was signed by her on 9 October 1996 and lodged with the Australian Electoral Commission on 10 October 1996. Her enrolment form was for 17 Melton Terrace Melton Hill in Townsville and I am satisfied that it is genuine. Her enrolment form was one of a number of enrolment forms which the evidence shows Mrs Kehoe (as Dawson then was) lodged with the Australian Electoral Commission in Townsville on 10 October 1996.

Kehoe disagreed with a suggestion put by Mr Douglas that the photocopy advertisement (Attachment 7A), which is one side of Exhibit 13D, had first come into the public arena on 19 October 2000.

Mr Douglas asked Kehoe:

My suggestion to you is that the first time this flyer or this advertisement was created was by the Townsville Bulletin of Saturday 19 October 1996. Now what I'm suggesting to you is that if that's correct you've got to be incorrect.

Kehoe took some time to answer and I asked him, 'Do you understand the question?' and he answered, 'I sort of ...'. A little later he said, 'I don't agree with what you're saying that it was only done on the 19 October.'

A little later he was asked:

But you're really asked to assume that what Mr Douglas says as to when it was first put into the public arena if you like is correct namely that it first came into the public arena on 19 October.

And he replied:

If it had only just come into the 19/10 well then what you'd be saying is correct—— but I mean I disagree with that yes.

The date of first publication of the advertisement has become important with Mr Douglas challenging Kehoe's evidence that Exhibit 13D was created and discussed at the meeting at which Exhibits 13B and 13C were discussed, and that the date of that meeting was 9 October 1996.

I now turn to part of Mooney's evidence concerning the advertisement. When Mooney gave evidence on 23 November 2000 he produced a document which became Exhibit 226. Exhibit 226 is a photocopy advertisement identical with the advertisement on one side of Exhibit 13D save that:

- (a) in Exhibit 226 further handwriting appears below the advertisement — it reads '26-10-96';
- (b) Exhibit 226 shows parts of other advertisements adjoining the Melbourne Cup party advertisement.

Mooney gave the following evidence:

Mr Douglas:

Q. Have you since caused a search — since the last time you were here — caused a search to be made in the records of the Council?

A. Yes I have.

Q. Could you have a look at this document please — can you tell us what that is?

A. This is a photocopy from the Townsville Daily Bulletin of 19 October. It contains on the bottom a handwritten notation, original handwritten notation, by a staff member of the Townsville City Council which would have occurred after it appeared in the Townsville Bulletin on 19 October. (T1822)

A little later he was asked:

Somebody from your staff wrote, what 26/10/96 as well?

And Mooney answered:

Yes that would have been a later insertion of the advertisement. (T1823/20)

He agreed the advertisement could have been published on 19 October 2000 and 26 October 1996.

Since the hearings have concluded, officers of the CJC have verified that the advertisement in Exhibit 226 and on one side of Exhibit 13D (Attachment 7A) first appeared on page 14 of the *Townsville Bulletin* published on 19 October 1996 and the advertisement was published again — this time on page 15 of the *Townsville Bulletin* published on 26 October 1996. Pages 14 and 15 of the *Townsville Bulletin* newspapers of 19 October 1996 and 26 October 1996 respectively are held by the CJC.

Mr Douglas has submitted that:

If one accepts that it was created on or after 19 October it is an inescapable

conclusion that his [Kehoe's] evidence on this point is completely wrong or indeed a fabrication, a conclusion he was notably reluctant to accept.

He further submitted that:

The conclusion should be that he has been thoroughly discredited about the time and purpose for which this document was used.

On the basis of the check with the *Townsville Bulletin*, it is obvious that Kehoe was incorrect in his assertion that Exhibit 13D came into existence at a meeting with Mooney on 9 October 1996. It appears that Exhibit 13D must have come into existence on or after the 19 October 1996. One consequence of this must be that Exhibit 13D cannot be relied on to prove that Mooney encouraged Kehoe to engage in fraudulent enrolments and/or utter the forged enrolments by lodging them with the Australian Electoral Commission in Townsville. The indisputable evidence is that all the forged forms were lodged with the Australian Electoral Commission on 10 October 1996 and the uttering occurred on that day. This was at least nine days before Exhibit 13D came into existence — perhaps longer. But Mr Douglas is right to say that Kehoe's continued insistence that Exhibit 13D was created on 9 October 1996 does at least reflect adversely on his creditworthiness and that is a matter for me to take into account in deciding whether or not Kehoe's evidence is so inherently incredible that no reasonable person could accept it as true.

With respect, I consider that Mr Douglas's claim that Kehoe's evidence that Exhibit 13D was created on 9 October 1996 was a fabrication is, on the evidence presently before me, not warranted. Fabrication means deliberate lying and I do not regard Kehoe's challenged evidence as being a fabrication.

#### **(vii) The evidence concerning Exhibit 67 (Attachment 8)**

Submissions by Mr Douglas concerning Exhibit 67 point to significant differences in evidence between Kehoe and Mooney as to the provenance of Exhibit 67 and what Exhibit 67 represents.

This is the document earlier mentioned and which, according to Kehoe, contained 18 names in Mooney's handwriting (numbered 1 to 18) and seven names (numbered 19 to 25) in Kehoe's handwriting. At T741, Mr Hanson asked Kehoe (in reference to Exhibit 67):

Q. Well what does this whole list signify then once it's been added to by you, what's it all about?

A. The — these names — the list of these names and I'm saying 1 to 25 were names that had been discussed that had to be enrolled legally or illegally into the Townsville electorate before the cut off date for the plebiscite.

Q. Discussed between whom?

A. Tony Mooney and myself.

On the matter of provenance, Kehoe in evidence said he went to Smith's office where there was an envelope waiting for him. Inside the envelope was a list of 18 names numbered 1 to 18 all in Mooney's handwriting. He said he wrote on seven more names numbered 19 to 25. Kehoe gave evidence that he wrote down the further names 19 to 25 because those names were discussed previously in previous meetings and they hadn't been listed down on his list and 'I didn't know whether he'd forgotten them or not' (T744). I shall not refer to Kehoe's evidence in any detail other than to recount that he says that when he met Mooney in the latter's office, Mooney had a copy of the list which went only to number 18.

Mooney's evidence was that at the meeting he asked Kehoe to show him his supporters, that Kehoe recited some 18 names and that he, Mooney, wrote them down on a piece of paper and in no particular order. He said Kehoe wrote down the balance of the names appearing on Exhibit 67 and he never believed Exhibit 67 was a list of 25 supporters at all and that he said to Kehoe, 'You've got to be joking'. Exhibit 67 shows the first 18 names and numbers in black ink and the numbers 19 to 25 and associated names in blue ink. The names in Exhibit 67 appear on the back of a blank ALP registration form.

Kehoe and Mooney are obviously far apart in their evidence as to how and by whom Exhibit 67 was created. As I have already stated, Exhibit 67 contains the names of nine of the 10 persons whose enrolment forms Kehoe pleaded guilty to forging. Exhibit 67 does not contain the name of the tenth person — O'Shea.

Mr Douglas has submitted there is nothing to corroborate that the list of 25 names in Exhibit 67 is a list of other than Kehoe 'supporters' who may or may not vote for Mooney in the plebiscite. He further submits that the list contains names of ALP members who are not registered, i.e. J Jones and J Jansen, and people already enrolled in the Townsville electorate, i.e. Langdon, McKenzie, McDonald, Ryan, Ole and Cutuli. He submits the list also included the names of people who did not appear on any ALP membership list, i.e. Bond and Jones, and that the list included people where no action was taken to 'move' them — such as Bull or Aldridge, Clark, Croft, Boyd and Buchbach.

In respect of the last-mentioned submission, I bear in mind Exhibit 70, which is four, partly completed enrolment forms found in Kehoe's possession by the Australian Federal Police. These were in the names of Leslie Clark, 1/181 Mitchell Street, North Ward; Leanne Buchbach, 1/181 Mitchell Street, North Ward; Graeme John Aldridge, 8 Castling Street, West End; and John Francis Jones, 32 Brooke Street, Railway Estate. Kehoe said that he knew these four people well or very well and:

I just made a decision not to enrol them fraudulently in Townsville — I made them more so than others (T1167).

I note also in this regard the evidence of Kehoe concerning the document marked 'E', which became Exhibit 69 [see Attachment 10] and which was said by Kehoe to have been discussed with Mooney:

A. ... I can recall that there was some discussion in relation to a number of people and I'll refer to Document E [Attachment 10] firstly. There's initials 'SC', 'HF', the names 'John Jones', 'Kimber' and I believe that they were discussed at this meeting and I had made a — for the exception of Kimber, 'SC' is Shane Campbell, 'HF' is Helen Filmer and John Jones. There were forms made or partially completed for those but I made a decision that they weren't going to go any further. Likewise, on Document C (Exhibit 67) there was one for Leslie Clark and one for Leanne Buchbach, one for Graeme Aldridge I believed as well. They were suggested previously to be moved.

Q. Who by?

A. Well, by, I can't remember whether it was Tony Mooney or myself but they were quite clearly living in the Mundingburra electorate, always enrolled in the Mundingburra electorate and were to be moved into the Townsville electorate.

Q. And I think we see shortly that you set about doing so by partly completing some enrolment forms?

A. That's correct.

Q. But you never, ever—— ?

A. With Tony Mooney, no.

Q. Never went through with it?

A. No, that's correct.

Q. Did you say 'with Tony Mooney'?

A. Some of those documents were done with Tony Mooney. I can't recall whether that was actually done at the time or at a previous meeting but I believe that they were done at — went through them with Tony Mooney. (T755)

Evidence from Mooney showed that before he gave evidence to the Inquiry on the second occasion, he had caused to be prepared a document, which became Exhibit 225 (T1817). In evidence he agreed with Mr Douglas that this document had been prepared setting out the names of the people on Exhibit 67 (Attachment 8) as well as their address as shown on the March 1996 Federal Roll and the ALP's records of addresses of 5 October 1996.



It is true that Exhibit 67 contains the names of persons who were not registered ALP members and names of persons already enrolled in the Townsville electorate.

As I have said, Mr Douglas submitted that there is nothing in the evidence to show that the list of 25 names in Exhibit 67 is other than a list of Kehoe 'supporters' who may or may not have voted for Mooney in the plebiscite. He has further submitted that Kehoe's evidence concerning the preparation undertaken before Exhibit 67 came into existence has been comprehensively discredited. He relies on his cross-examination of Kehoe at (T1163–1170) and on Exhibit 225. I have taken that cross-examination into account. It traversed matters other than Exhibit 67. I do not see any reason to repeat the cross-examination. No doubt some of the answers given would raise talking points in front of a jury, but I do not see the answers as disclosing that Kehoe's evidence as to preparation undertaken before Exhibit 67 came into being has been comprehensively discredited — to use the phrase in Mr Douglas's submission.

However, there are the following relevant matters:

- (a) the very wide gap between Kehoe and Mooney in their evidence as to how Exhibit 67 came into being;
- (b) that Exhibit 67 does contain names of nine of the ten persons whose electoral enrolment forms Kehoe forged;
- (c) that in Exhibit 67, of the first 18 names said by Kehoe to be in Mooney's handwriting, 8 were the names of persons whose enrolment forms Kehoe pleaded guilty to forging. Of the remaining 10, the names of Clark, Buchbach (or Bushach in Exhibit 67) and Aldridge (three of the enrolment forms in Exhibit 70) are also said to be in Mooney's handwriting. Mooney says nothing about querying these names other than to say that he was sceptical;
- (d) that in exhibit 67, in the 7 names said to be written by Kehoe, the name of Bakker appears — Kehoe pleaded guilty to forging her enrolment form — and the name of John Jones (one of the Exhibit 70 forms) also appears;
- (e) Exhibit 67 contains names of four persons whose electoral forms Kehoe had partly completed for false enrolment but decided not to proceed with — Clark, Buchbach, Aldridge and Jones as shown in Exhibit 70.

I had ample opportunity to observe and hear Kehoe give evidence. I have considered Mr Douglas' submissions concerning Kehoe's credibility in respect of Exhibit 67. I do not believe that Kehoe's evidence in respect of that exhibit is such that it is tenuous or inherently weak or vague; nor do I believe that it is so inherently incredible that no reasonable person could accept it as true.

I should add that given Mooney's evidence (T1832), that there were potentially two to three hundred people eligible to vote in the Townsville plebiscite, one may well ask — if a list of 25 persons is a final list of persons, who it was hoped would support Mooney, what effect, if any, would that list have had on the final vote?

#### **(viii) The evidence concerning Exhibit 68 (Attachment 9)**

Exhibit 68 (Attachment 9) is a list of names (some with addresses) in Kehoe's handwriting which Kehoe says he discussed with Mooney. The list contains names some of which are crossed out with a single line and other names which are not crossed out. Kehoe stated (T754) that names were crossed off 'just a cross check list' when 'the forms were done'. In cross-examination by Mr Douglas, Kehoe stated he did not know why the names 'Chambers', 'Bond' and 'Kimber' had not been crossed out although he had prepared false enrolment forms in respect of them. I add that Exhibit 68 contains the handwritten names of Pamela Hirning, Amanda Hirning, Rodney Whitehead and Jenny Lynas and addresses for each of them as well as D Lunney, 17 Melton Terrace. The crossed out names include the following whose enrolment forms Kehoe pleaded guilty to forging:

- Robyn O'Shea
- J Schmidt
- J Langdon

- C Gotch
- M Crowley
- A Foy
- L Bakker

These names appear in seven of the 10 charges and the names of the remaining three — Kimber, Bond and Chambers all appear on Exhibit 68 but are not crossed out. I add also that the names of Leanne Buchbach, Leslie Clark, G. Aldridge and J. Jones appear on Exhibit 68 but are not crossed out. The incomplete electoral forms for each of these four persons are Exhibit 70. For completeness, I might add that the names L. Clark and K. Buchbach are written again on Exhibit 68, but instead of having a single line through them these names are substantially obliterated with several lines drawn through them.

Mr Douglas submits that when Kehoe said that in Exhibit 68 he was crossing out names because all the enrolment forms had been completed, that evidence did not accord with the names Kimber, Bond and Chambers not having been crossed out on Exhibit 68. This submission also attacks Kehoe's creditworthiness.

Mr Douglas points to his cross-examination of Kehoe at T1174–5 in which Kehoe denied suggestions that he had not had any discussion with Mooney about Exhibit 68. These denied suggestions do not prove the matter of the suggestions.

Once again I do not believe that Kehoe's evidence in relation to this document is so inherently incredible that no reasonable person could accept it as true.

#### **(ix) The evidence concerning Exhibit 71 and the contemporaneous documents generally**

Exhibit 71 is a copy of a letter dated 6 November 1996 which Kehoe wrote to the Officer in Charge, Australian Electoral Commission in Townsville. Attached to the letter was a list of the following names:

- Andy Kehoe
- Kerrie Brown
- Jane Jansen
- Leah Bakker
- David McKenzie
- Jamie Schmidt
- Chris Gotch
- Matthew Crowley
- Darryl Cutuli
- Daniel Chambers
- Jaymin Langdon
- Ian Boulton
- Noel Bull

The letter, which is Exhibit 71, reads (omitting formal parts):

I am writing to you in relation to a number of people I recently enrolled on to the Herbert Division Role [*sic*].

I am currently Townsville Electorate Executive Committee President for the Australian Labor Party in Townsville.

Due to up and coming Local Elections and possible State Elections I contacted a number of people whose names appear on the attached sheet with regards to their possible nominations for different positions either locally or statewide. With that in mind I checked their current enrolments and corrected addresses to their current locations.

It was remiss of me not to deliver those immediately to your office for processing. As it was, I had my wife deliver them to your office on Thursday, October 10 1996.

I thought this would have been enough time to have them processed before Monday, the 14 of October 1996.

The 14 of October 1996 I'm informed was a cut-off date for all intending nominees for the positions called for at that time and to determine eligibility to participate in selecting candidates.

In my sister's case, Jane Jansen, she was enrolled on the 15 October 1996. Due to a domestic situation I am currently living at my sister's address — thus a change to my enrolment.

I would like to request that if it were possible could the following persons be accepted as from the 14 October 1996 to allow any of them to participate in the process that I have outlined.

I appreciate any assistance you can give me on this matter. I can be contacted on 7242 240 after 4.30 p.m.

Mr Douglas has submitted that of the 13 names on the list attached to Exhibit 71, two persons, Bull and Cutuli, had no enrolment forms submitted at all, and five were not the subject of any fraudulent activity. It is apparent from the list that Bakker, Schmidt, Gotch, Crowley, Chambers and Langdon were persons whose electoral forms Kehoe had forged. By a process of elimination the remaining six on the attached list were Kehoe, Brown, Jansen, McKenzie, Bull and Boulton, and it is true to say there was no suggestion that there was any fraudulent activity in regard to their enrolments. Mr Douglas has further submitted that when considering all the lists of names in Kehoe's handwriting and which are part of the evidence before the Inquiry and the list of 13 names attached to Exhibit 71, it is impossible to correlate the information with Exhibit 67 (Attachment 8), which contains 18 names in Mooney's handwriting, and with Exhibit 13B (Attachment 5), which contains several names in Mooney's handwriting. He further submits that none of the documents is dated and there is no credible explanation as to why some names were added or deleted at various stages.

While it is perfectly true to say that in a number of cases it is difficult to correlate information given in the Inquiry, Kehoe, in his evidence, has given his versions as to the circumstances in which Mooney's handwriting appeared on Exhibit 67 and Exhibit 13B. As already mentioned, there is a wide gap in the testimony of Mooney and Kehoe as to how Mooney's handwriting came to be on Exhibit 67, and I do not propose to cover that ground again. Fundamentally, Kehoe has given sworn evidence that Mooney was aware of and encouraged him in his plan to 'move' by way of false enrolment various persons into the Townsville electorate and encouraged him (Kehoe) to utter these forged false enrolments by filing them with the Australian Electoral Commission in Townsville. Mooney denies these allegations. Certain documents said to be reasonably contemporaneous have been put into evidence and the following matters are not in issue:

- (a) Kehoe did cause to be lodged with the Australian Electoral Commission at Townsville a number of enrolment applications, some of which were forged and were the subject of the 10 charges of forgery to which he pleaded guilty;
- (b) neither Kehoe nor Mooney kept satisfactory records as to what occurred at their various meetings, but there are nevertheless a number of reasonably contemporaneous documents which are relevant to the charges of forgery and uttering and these documents cannot be ignored.

Nine of the 10 persons whose forms are forged are named in Exhibit 67. Seven appear in Exhibit 13C and in Exhibit 68 the names of all 10 appear. We know from an examination of the various enrolment forms that all 10 were lodged with the Australian Electoral Commission at Townsville on 10 October 1996. Obviously, any tribunal of fact asked to determine issues at a trial will be focusing on evidence as to the circumstances in which the various exhibits came into being and particularly those containing Mooney's handwriting. In so far as Exhibit 71 is concerned, I do not see that exhibit makes Kehoe's evidence so inherently incredible that no reasonable person could accept it as true.

### **(x) The evidence concerning Kehoe's falling out with Mooney**

Mr Douglas has pointed to Kehoe's two versions of the events or event that gave rise to the quarrel he had with Mooney that led to their falling out with each other.

In evidence to the Inquiry Kehoe told Mr Hanson that he and Mooney ended up having an argument over Kehoe not getting out enough to canvass potential supporters.

When Mr Douglas cross-examined Kehoe he took him to the transcript of the record of interview Kehoe had had with the CJC officers on 29 September 2000. In the transcript of tape 1, Kehoe said:

I'm not even too sure if they'd been posted out [referring to the votes] and I'm trying to recall what the argument was over. All I can really remember is that he basically called me a cunt over the phone and I thought to myself, well, I most certainly I do not have to put up with that from such an asshole like him——  
[Kehoe then went on to say how as he lived only about 200 metres away, he went down and verbally abused Mooney in Mooney's home]. (page 14)

The transcript of the interview shows Kehoe was then asked:

Q. So what was the falling out over?

A. Um, we were discussing, I don't remember whether it was, there was a signs policy going on.

Q. —signs, signs as in signs?

A. And the Council had moved to bring in a signs policy — I objected to it — I had a large sign on my business and along with others and there was a public meeting over it and all the business people in the room there was, you know, the radio station said there was a public meeting so we all went along there and we had a meeting. In the second meeting I was voted in as the Chairman by the business people and at the meeting — I was the spokesperson — and I seem to remember we were arguing about that and, ah — I can't recall the conversation, it was basically that, um, I don't know whether he was going to put it off and then bring it back on later on or whatever but I just said 'No, fuck you', you know. I remember having the conversation with him. I don't know whether that was actually the but we, when he, when he, anyway, when he called me a cunt, I just said, 'Well, fuck that, that's it, I don't have to take that ...

Kehoe then told Mr Douglas that there had been a number of discussions between him and Mooney leading up to the exchange.

Mr Douglas submits that this clear and unexplained disparity on a peripheral issue shows that Kehoe is willing to say anything, regardless of the truth.

In my view such a conclusion cannot be drawn from this evidence.

### **(xi) The inconsistencies between Kehoe's evidence and that of other witnesses**

#### **Lee Bermingham's evidence**

Mr Douglas submits that Kehoe's evidence is inconsistent with that given by Lee Bermingham during the public hearing at T2689–2700. Bermingham at these pages was answering questions from Mooney's solicitor. He was at pains to make it clear to me that he would not have let Mooney as a candidate know anything about false enrolments.

If that evidence from Bermingham is accepted as true, it shows that he, Bermingham, would not tell a candidate of falsely enrolled persons, but it says nothing to the crucial question, 'What did Kehoe and Mooney discuss?'. More particularly, it says nothing about discussions that Kehoe said he had with Mooney concerning fraudulent movement of persons without their consent onto the electoral rolls for Townsville.

Mr Douglas also refers to the evidence of Bermingham concerning the four names on Exhibit 68 (Attachment 9) being in direct conflict with that of Kehoe. Kehoe in evidence told the Inquiry that the names Amanda Hirning, Pamela Hirning, Rodney Whitehead and Jenny Lynas were written on Exhibit 68 on an occasion when Mooney

told him he had some names from Bermingham and he needed addresses for them. Kehoe said:

A. He [Mooney] went away and came back with a list — he said that he had some names from Lee Bermingham and he needed addresses for them. As we were going through these — this list that we'd already gone through — I'm referring to the list, Document C (Exhibit 67) — he gave me — he read out the names of Pamela Hirning, Amanda Hirning, Rodney Whitehead and — Jenny Lynas

Q. And you wrote those names down did you?

A. Yes I — I gave Tony Mooney — he asked me for what addresses they could be put at and I gave him the addresses ... (T746)

In his oral evidence to this Inquiry, given at the public hearing, Bermingham admitted he knew of the four names as ones to be falsely enrolled (and which were ultimately falsely enrolled). All these people were from Brisbane. When asked from where he got the Townsville addresses for the four persons, Bermingham said:

A. I believe I got them from Andy Kehoe.

Q. You believe so?

A. Yes.

Q. Not from Tony Mooney?

A. Not from Tony Mooney.

Q. Are you quite sure about that?

A. I'm not a hundred per cent sure but I'm pretty sure.

Again, at T2582/36, when speaking about the enrolment applications for Hirning, Hirning, Whitehead and Lynas, Bermingham said he was unsure of the sequence of events, but knew he played some role in passing the addresses on to Joseph Felice so that Felice could fill out and lodge the forms in Brisbane and that to the best of his knowledge he thought he got the Townsville addresses from Kehoe. He did not think that he had had any discussion with Mooney in reference to the names.

Mr Douglas submits that there should be no doubt that the names were provided by Bermingham to Kehoe and that Mooney had nothing to do with those false enrolments. To accept this submission I must first reject Kehoe's evidence that Mooney told him that he had received the names from Bermingham. Kehoe denied having got the names from Bermingham. This is a matter I cannot resolve. Resolution of that problem will be for the tribunal of fact if the matter is placed before them.

### **Rhonda Vetter's evidence**

When Mr Douglas cross-examined Kehoe at pages 1148 and 1149 he asked:

Let me step forward a little bit now to 9 October. You were able to pin down that date you thought in your previous evidence as an occasion when you had a meeting with Mr Mooney at his Council Office? Do you remember that? (T1149/50)

Kehoe replied:

I believe that to be the date. However, I remember that Kerrie Brown came to Geoff Smith's office and I completed her form at that particular time and I believe that to be the same day that I went to Tony Mooney's office.

The enrolment form for Brown (Exhibit 17) shows it was dated 9 October 1996 — it was one of a number lodged with the Australian Electoral Commission in Townsville on 10 October 1996. It is apparent from Kehoe's above answer that by referring to the date on Brown's enrolment application he has fixed 9 October 1996 as the date he went to Geoff Smith's office.

In the course of that cross-examination, Kehoe could not recall who was the lady behind the desk in Smith's office. He spoke of one lady having broken her leg but could not recall if it was she who was present on that day. The lady who had broken her leg (in 1995) was Rhonda Vetter.

Mr Douglas submits Vetter does not confirm Kehoe's claim to having gone to Smith's electorate office on 9 October 1996. Vetter did not give sworn evidence to the Inquiry, but I have read a summary of her interview [Exhibit 401TT]. The summary shows that her duties as an electoral officer were to act as a general assistant to Smith with front office duties and confidential duties as well. She had full knowledge of the people who visited Smith's office. She recalls the Townsville plebiscite period. She said many people came into Smith's office at this time in connection with the Mooney campaign, that one of Mooney's strong supporters was Andy Kehoe and that she knew Kehoe as he had been president of the EEC for the state seat of Townsville. She said that Kehoe was regularly in Smith's office, that she couldn't recall any specific documents being handed to Kehoe by Smith or Mooney whilst he was in the office, nor does she remember Mooney ever leaving any paperwork for Kehoe with the office, but this would not have been unusual as Kehoe was the dominant coordinator for Mooney. The summary says, 'She stated this could have occurred but due to the time frame and the fact that the office was so busy this could have been the case and she simply does not recall it occurring.' The summary shows that Vetter recalls that in July 1995 she did break her leg and that Smith seconded two persons whom she named. She is adamant that this was not during the Townsville plebiscite time.

It is true that Vetter does not corroborate Kehoe's claim that he went to Smith's electorate office, but nor does she challenge the accuracy of his claim that he went there. The extracts from the summary which I have just set out show that Kehoe was regularly in Smith's office and, in effect, the office was so busy that he could have been there and she simply does not recall that having occurred. I am unable to conclude, and I think any objective person would, on hearing Kehoe's evidence which I have set out above, and reading the summary of Vetter's interview, conclude that there was no inconsistency between what Kehoe said and what Vetter says.

#### **(xii) The evidence concerning Kehoe's claim to have attended the Mayor's office on 9 October 1996**

Mr Douglas has submitted that this claim is not corroborated by the Mayor's diary nor by the Mayor's personal assistant at the time, a Ms Sandra Anne Palmer. Palmer was interviewed by an officer of the CJC on 23 October 2000. She now lives in South Australia. I have read a summary of her interview [Exhibit 401II] — she did not give oral evidence to the Inquiry. She was Mooney's personal assistant for 10 years from December 1989. The summary of the interview includes the following:

Palmer stated with respect to Mooney's diary she kept it on her desk and made entries in pencil for meetings and other appointments which Mooney was involved with. She stated that generally all appointments were written into this diary. However, there were occasions when some meetings or appointments were not recorded in the diary. She stated that she typed up his appointments on a daily basis and handed Mooney this document so that he was aware of his schedule. She did not keep an electronic diary for him.

This statement admits that not all meetings or appointments were recorded in the diary and one is left with the impression that the appointment schedule was handed to Mooney at the start of the working day. The summary went on:

Palmer stated she knew Andrew James Kehoe. She stated that to her knowledge Kehoe was helping Mooney with his campaign for election to the state seat of Townsville. She stated that Kehoe and Mooney met on a few occasions in the Mayor's Council office during this time. She stated that she could not recall whether these meetings were pre-arranged but if they were she would have made an entry in Mooney's diary. She states that some meetings could have occurred without being entered in the diary. She stated this would have occurred if Kehoe rang Mooney direct. Palmer also stated that to her knowledge Mooney met with Kehoe at home on weekends during this period.

Again, according to her statement, Palmer admits that meetings between Kehoe and Mooney could have occurred without being entered into the diary. I do not regard the submission on this particular point as being of any great weight against Kehoe's creditworthiness — I would describe it as nothing more than perhaps a talking point in front of a jury.

**(xiii) The inconsistencies in Kehoe's evidence on peripheral matters**

In this regard I have already referred to the submission by Mr Douglas in relation to Kehoe's evidence concerning the falling out with Mooney. I will not repeat that.

Mr Douglas's submission is that there are other inconsistencies on peripheral issues and he refers to Mr Mulholland's cross-examination of Kehoe at (T1326–1328) when Mr Mulholland focused on the enrolments of Chambers and Langdon. I note that when Kehoe gave evidence on 6 October 2000 (T395/6), Mr Hanson referred Kehoe to Chambers's electoral enrolment form (Exhibit 18). In cross-examination Kehoe said he did not believe that he signed the signature 'Chambers' on Exhibit 18 and that he admitted the form was a forgery on the basis that he wrote in a false address without the authority of Chambers although Chambers signed the form. He told Mr Hanson that he believed Langdon fell into the same category.

The evidence from Kehoe on 6 October 2000 as to the circumstances in which he accepted forgery of Chambers' form conflicted with what the Stipendiary Magistrate was told when Kehoe pleaded guilty to 10 offences under section 344(1) of the CE Act (including Chambers). I have seen a copy of the transcript of those proceedings of 24 July 1997. When dealing with the matter concerning Chambers the Prosecutor said:

At the time of these events Mr Chambers ... did not sign the card that was lodged with the Commission nor did he give any other person authority to do so.

When it came to the charge concerning Langdon the Prosecutor said:

In relation to the electoral enrolment form, Langdon did not complete that form nor did he sign it, nor did he give any person permission or authority to complete the form on his behalf.

Mr Douglas says, in effect, that when Kehoe returned to the witness box on 26 October 2000 he changed his evidence on this issue when he acknowledged that he did forge the signatures of Langdon and Chambers. This I think occurred, but in the context that Kehoe says he recalls that some enrolment application forms were signed in blank by some ALP members when they first joined the ALP and he is confused who they were. I should also say in fairness to Kehoe that when initially in the witness box he was not referred to statements made by the Prosecutor at the time he pleaded guilty and was sentenced.

**(xiv) Kehoe's motive to lie**

Mr Douglas in his submissions has rhetorically asked:

Why would Mr Kehoe want to falsely enrol members in Townsville and why would he falsely implicate Mr Mooney in his forgeries when he had already been punished for them?

Mr Douglas then suggested that Kehoe may be vindictive after the falling out with Mooney. Mr Douglas submits Kehoe's motive for enrolling members in Townsville was that if Mooney had been elected to the Legislative Assembly there would be a vacancy on the council for him.

In addition to Mr Douglas's references at pages 24 to 29 of his outline, I note that in Exhibit 74 — the transcripts of Kehoe's interview with CJC officers on 29 September 2000 — Kehoe refers also to his apparent intention to nominate for division six (see transcript of tape 2, page 23) and his reference to his being 'seen to be able to deliver' or 'an ego ride to an extent if you are going to go anywhere or to command that support or that position, you'd be able to deliver them' (tape 2, page 25).

Later on at the same page Kehoe is recorded as having said:

To command your respect, well, it doesn't really matter who if you (indecipherable) if you deliver your votes, you get the respect that you want within the Labor Party?

At tape four, transcript page 7, Kehoe is recorded as having said:

I was touted as the numbers man and within our circles of people, people look to me as being sort of in a comfort zone because I was there and I was some sort of opposition against Ehrmann and Davies and Reynolds and people like that.

In my view these are all matters for a tribunal of fact.

**(xv) The evidence concerning the Kimber forgery**

Counsel Assisting have made submissions to the effect that the addition of Kimber's name in Mooney's handwriting to Exhibit 13B (Attachment 5) and Exhibit 67 (Attachment 8) is capable of supporting Kehoe's evidence that Mooney was aware of and encouraged Kehoe in the false enrolments to which he pleaded guilty and was aware of and encouraged him to utter those false enrolments. In particular they say:

- (d) Merv Kimber was a person Mooney knew as having worked on his 1995 Mundingburra campaign (T1842) but Mooney did not contact him as part of his campaigning in the plebiscite (T1856) in marked contrast to the effort he put into retrieving the ballot papers for the two Laverack brothers. Kimber's enrolment was one that Kehoe forged, transferring his enrolment from Mundingburra to Townsville and it might be inferred that Mooney's knowledge of this was the reason why Mooney did not contact him.

Kehoe's evidence concerning Exhibit 67 and the name Kimber, which is number 18 on the list in Mooney's handwriting, is that he picked up Exhibit 67 in an envelope at Geoff Smith's office and took it to a follow up meeting with Mooney (T745):

... in number 18, Merv Kimber, we had a discussion about Merv Kimber which is — which I recall now as — there was a discussion in relation to the addresses of Tippet Street and I believe Leeds Street. The reason for that discussion I believe Tippet Street is out of — in the Mundingburra electorate and Leeds is in the Mundingburra electorate, they're not too far apart.

Mr Hanson:

Q. So what exactly was the discussion?

A. Well if he was in — if he was in Mundingburra it was only a move around——

Q. He was no good to Mr Mooney?

A. Sorry?

Q. If he was in Mundingburra he was no good to Mr Mooney?

A. There was only one street or two streets I think it is to make him into the Townsville electorate.

Q. Very well

A. And we discussed — I mean we discussed that point there. I believe it was even checking on the boundary list on the boundary sheet.

Q. And that's one that you falsely moved—— ?

A. That's correct.

Q. And pleaded guilty to subsequently. All right, had you done that yet by this stage by the point of this meeting do you recall?

A. Had I falsely——

Q. Had you lodged——

A. Lodged——

Q. Had you composed the false enrolment forms by this point in time?

A. I believe that I'd enrolled — I'd filled out almost all the names here — had a form filled out whether it had been completed or not I can't physically recall. There were some that I wished to go no further with.

Exhibit 23 is a photocopy of Kimber's false enrolment which was the subject of one forgery charge to which Kehoe pleaded guilty. It shows Kimber's address moved from 84 Tippet Street, Gulliver, to 4 Leeds Street, Gulliver, with a postal address of PO Box 188, Hermit Park — a post office box under Kehoe's control.

Mooney gave evidence to the Inquiry (T1842) that Kimber had volunteered to assist Mooney's campaign in the 1996 Mundingburra by-election, that he attended at the campaign office and assisted in the mail distribution. Mooney said he knew Kimber as a person who volunteered but denied knowing him as a friend (T1842). Mooney told me that he did not contact Kimber.



Mr Hanson examined Mooney concerning Exhibit 13B. Mooney was asked, 'What is the purpose of this list?' and he replied:

This list is nothing more than a list of names who Kehoe purported were supporters, people who potentially could participate in the plebiscite.

Mooney said that Exhibit 67 was a list of names by and large which Kehoe had said were his potential supporters (T1855).

Mr Douglas submitted:

The presence of Mr Kimber's name in some of the documents is seized on by Counsel Assisting to lead to an inference that his forged enrolment was made with Mooney's knowledge because Mooney did not contact him during the plebiscite campaign.

He further submits that:

The more logical and much more plausible inference is that Mr Mooney did not contact Mr Kimber because he had left to Mr Kehoe the task of working out whether he was eligible to vote and, if so, to follow up Mr Kimber.

Mr Douglas argues that Kehoe accepted this proposition in respect of the people he was charged with and he has referred me to the following passage in Kehoe's evidence:

Mr Douglas:

Q. Did you tell Mr Mooney that he didn't have to worry about your supporters?

A. I can recall a conversation along the lines of those — of that support during the preselection process that we didn't have to worry about those particular ones that I was charged with. I — part of a discussion — I mean, where basically they were 'solids' and they were going to vote for him. (780/1– 0)

The submission has moved from the particular 'Kimber' to the general — 'your supporters' and 'ones that I was charged with'. I do not find this submission has much weight.

In the course of explaining why he did not contact Kimber, Mooney said, in effect, that he had his mayoral duties to attend to.

On the aspect of Mooney having to attend to his mayoral duties, the evidence of Ronald Morgan Barnard given on 10 October 2000 showed that in the 1996 plebiscite:

- (a) he was a supporter of Mooney (T552/10)
- (b) on two occasions on the one day he accompanied Mooney to two addresses — at Brooks Street and Plume Street where in Mooney's presence he collected two completed ballot papers (T552–553)
- (c) that Mooney had invited Barnard — saying, 'When I'm coming around would you like to come for a ride with me?' (T553/30)
- (d) that the purpose of his trip to the two addresses was to pick up ballots (T554/58).

If Barnard's evidence is accepted as correct, it is further evidence that Mooney did leave the mayoral office and actively visit voters — but as Counsel Assisting submit — he never visited Kimber, a man he said he hardly knew.

One other aspect of the submissions concerning Mooney not visiting Kimber appears to be that, given that Kimber was an active helper and supporter of Mooney in the Mundingburra by-election, it may be thought surprising that his name did not originally appear on the typed list on Exhibit 13B, if Kimber were living in the Townsville electorate and therefore eligible to vote for Mooney and was, as Mooney says, a person he hardly knew. According to Mooney, Kehoe told him that Kimber had moved but Mooney did not say to where Kimber had moved. The question arises, why did Mooney write Kimber's name on Exhibit 13B, particularly when his name did not

appear on Exhibit 13C the list Kehoe says he prepared? Also, why did Mooney write Kimber's name on Exhibit 13B unless he believed Kimber was living in or had an address in the Townsville electorate? One obvious inference from the presence of Kimber's name on Exhibit 13B and its absence from Exhibit 13C is that Kimber's name must have been discussed by Mooney and Kehoe and one has to ask why was it discussed and exactly what was the discussion about it?

At this stage I wish to make some comment in relation to Exhibit 67 (Attachment 8). It will be recalled that Kehoe says the names besides numbers 1 to 18 were in Mooney's handwriting and were on the list when he got it at Smith's electoral office on 9 October 1996. Kehoe says he then wrote a further seven names which are numbered 19 to 25. Mooney says he wrote out the first 18 names on Exhibit 67 when, at a meeting, Kehoe recited the names. Number 18 on Exhibit 67, and in Mooney's writing, is Kimber. Mooney says Kehoe wrote down the balance of the names. One wonders why Mooney did not write out all the 25 names if the document Exhibit 67 was created in the manner for which he contends.

At the end of the day, these matters raised by Mr Douglas in his submission really are matters best left to be resolved by a tribunal of fact. Furthermore, the questions I posed and whether or not the addition by Mooney of Kimber's name to Exhibit 13B is significant are for a jury to consider should Mooney be sent to trial.

#### **(xvi) The evidence concerning the telephone records**

Mr Douglas urges that the presence in the telephone records (Exhibit 305) of calls made by Bermingham to Mooney's office at the material times does not affect what Mr Douglas describes as 'the very real likelihood' that Kehoe obtained the names by ringing Bermingham from any telephone or mobile phone available to him on his travels around Townsville. Bermingham gave oral evidence (T2699) that he received calls from Kehoe. Here again, it seems to me, the evidence of the telephone records would be admissible in any charge against Mooney of forgery and/or uttering on the Crown case on such charges. It will be for any tribunal of fact to decide what inferences can be reasonably drawn from that evidence. Certainly, these records are not conclusive.

## **CONCLUSION**

Upon consideration of all the issues concerning the credit of Kehoe, I conclude that neither when looked at individually nor globally is Kehoe's evidence so inherently incredible that no reasonable person could accept it as true.

Having considered all the evidence before this Inquiry which touches the matters of the 10 charges of forgery to which Kehoe pleaded guilty on 24 July 1997 and which concerns the uttering of the forged electoral enrolment forms, I recommend that that evidence be referred to the Commonwealth Director of Public Prosecutions for his consideration as to whether he wishes to proceed against Mooney for the offences of forgery and/or uttering.

At this stage I should refer to a passage of Counsel Assisting in their submissions to this Inquiry:

The evidence in these pages [T732/745] justifies the matter being referred to the Director of Public Prosecutions for the Commonwealth for his consideration as to whether he wishes to proceed against Mooney for the offences of forging and uttering on the basis that the forgeries perpetrated by Kehoe were done with Mooney's knowledge and encouragement and were then lodged with the Electoral Commission for Mooney's benefit making Mooney a party to Kehoe's offences.

This submission does not deal with the common law doctrine of common purpose.

Section 4 of the Crimes Act applies the principles of the common law with respect to criminal liability to offences against the laws of the Commonwealth. I shall briefly comment on the doctrine of common purpose. In *R v. McAuliffe* (1995) 183 CLR 108 the High Court at pages 113 and 114 said:

The doctrine of common purpose applies where a venture is undertaken by more than one person acting in concert in pursuit of a common criminal design ... The liability which attaches to the traditional classifications of accessory before the fact and principal in the second degree may be enough to establish the guilt of a secondary party: in the case of an accessory before the fact where that party counsels or procures the commission of the crime and in the case of a principal in the second degree where that party, being present at the scene aids or abets its commission. But the complicity of a secondary party may also be established by reason of a common purpose shared with the principal offender or with that offender and others. Such a common purpose arises where a person reaches an understanding or arrangement amounting to an agreement between that person and another or others that they will commit a crime. **The understanding or arrangement need not be express and may be inferred from all the circumstances.** If one or other of the parties to the understanding or arrangement does or they do between them in accordance with the continuing understanding or arrangement all those things which are necessary to constitute the crime, they are all equally guilty of the crime regardless of the part played by each in its commission. [my emphasis]

Later, at page 114, the High Court said:

... the test has become a subjective one and the scope of the common purpose is to be determined by what was contemplated by the parties sharing that purpose.

If a prosecution of Mooney were undertaken relying on the doctrine of common purpose the question will be whether the Crown has proved beyond reasonable doubt the existence of a common purpose to forge and/or utter the forged enrolment forms or any of them; that test is subjective and will focus on whether, and particularly in relation to uttering, the act charged was within the Party's contemplation at the time the common purpose was formed.

It is for the Commonwealth Director of Public Prosecutions to decide whether there should be a prosecution and, if so, the basis or bases on which the Crown will seek to impose criminal liability.

I must add that in reaching my conclusion to recommend that this matter be referred I considered whether or not Mooney could, and should be, charged with breaches of section 344(1) of the CE Act — as Kehoe was, and to which he pleaded guilty — or whether consideration should be given to charging him with having committed offences under section 67 of the Crimes Act. As I have indicated in chapter 1, a prosecution is no longer possible for a breach of the CE Act as all such prosecutions are statute barred.

Obviously, what Kehoe did in each of the 10 cases to which he pleaded guilty amounted to a forgery — the Commonwealth Electoral Office and the State of Queensland Electoral Office acted on or accepted as genuine or believed each of the enrolment forms to be genuine and, to the prejudice of the Commonwealth and the State of Queensland, caused the names and addresses for each of the 10 persons to be entered on what Kehoe intended be relevant Commonwealth and State electoral rolls. The result was that in respect of each of the persons named in each of the 10 charges, the Commonwealth and State electoral rolls incorrectly and falsely showed that each of the ten named persons resided at particular addresses in the Townsville electorate.

There is no doubt on the evidence that Kehoe caused each of the 10 forged documents to be uttered even though it was his wife who actually delivered the documents to the Electoral Office. She was clearly his agent.

Section 67 of the Crimes Act relevantly reads:

Any person who forges or utters knowing it to be forged:

...

(b) Any document ... deliverable to ... any public authority under the Commonwealth or any Commonwealth officer

...

shall be guilty of an indictable offence;

Penalty: imprisonment for ten years.

Enrolment of persons qualified for enrolment is the subject of Part VIII of the CE Act and section 99, which is within Part VIII, deals with claims for enrolment or transfer of enrolment. In my view, the 10 enrolment application forms, the subject of the charges against Kehoe, were documents deliverable to a public authority under the Commonwealth. Each charge to which Ehrmann pleaded guilty alleged delivery to a public authority under the Commonwealth and I should expect each of Kehoe's charges to have contained the same allegation — I have not seen a copy of his charges.

Accordingly, in my view, Kehoe could have been charged with forgery under either section 344(1) of the CE Act or section 67(b) of the Crimes Act.

In the latter case, each offence charged is indictable and the maximum penalty is 10 years' imprisonment. There is no statutory time bar to prosecuting a person for an offence under section 67(b) of the Crimes Act.

I have considered that it might be said that it would be unfair if the Commonwealth Director of Public Prosecutions decided to prosecute Mooney on charges of forgery and/or uttering under section 67(b) of the Crimes Act when Kehoe was charged under the CE Act. I reject such a view for the following reasons:

- (1) Mooney was the candidate in the plebiscite who stood to benefit from the forgeries and/or utterings and, if the Commonwealth Director of Public Prosecutions decides to prosecute him, there is no statutory time bar to his being prosecuted under section 67(b).
- (2) Kehoe, although he was the person who actually forged and uttered the documents was, if Mooney be found guilty of forgery and/or uttering, a lesser player than Mooney.
- (3) The Court of Appeal in its judgment delivered on 21 February 2001 in *Karen Lynn Ehrmann v. The Queen* ([2001] QCA 50) viewed seriously the offences she committed — she had been charged under section 67(b) and applied for leave to appeal against severity of sentence. Although I have earlier set out certain comments by members of the Court, I now repeat them because they are important. The President stated:

The learned primary Judge ... rightly noted the seriousness of the crimes which interfere with the integrity of the electoral roll and affect the confidence of the public and the democratic process. Such conduct increases public cynicism towards those who are involved in politics. A reliable electoral roll and public confidence in it are matters fundamental to an effective democracy.

Thomas J A said:

Ms Ehrmann engaged in a form of political cheating designed to obtain personal advantage for herself and her political allies ...

In a case such as this I consider deterrence to be a very important factor. The crime is not victimless, as was submitted below. Public morality, the democratic process and the public at large are the victims of such distortions. I do not think that the Courts can send a signal that the electoral system may be polluted by forgery as it was here, without serious punishment.

The view to which I have ultimately come is that the evidence before the Inquiry should be referred to the Commonwealth Director of Public Prosecutions for his consideration as to whether he wishes to proceed under the Crimes Act by presenting an indictment against Mooney for the offences of forging and/or uttering.

## EVIDENCE AGAINST REYNOLDS

Counsel Assisting submitted that the evidence in respect of the 1996 plebiscite within the ALP selecting its candidate for the state electorate of Townsville raises only two possibilities of criminal conduct by Reynolds. They are:

- (1) possible complicity in the false enrolments by Karen Ehrmann;
- (2) possible forgery associated with the ballot papers in the names of Rodney Pitts, Jane Cox and Cherise O'Shea.

I shall deal with each in turn.

## Possible complicity in the false enrolments by Ehrmann

Reynolds gave sworn evidence to the Inquiry on 9 October 2000 and 1 December 2000. On his first visit to the witness box he told me that Ehrmann was one of many people supporting him in the plebiscite (T414) and that Shane Foster was another of his supporters (T414). He said it came as a surprise to him to hear what Ehrmann and Foster admitted to having done, that he had no idea whatever that they were involved in fraudulently enrolling people within the electorate, that he had no idea at all that they had been 'at it' for some years according to their own admission and no idea at all that he was possibly the beneficiary of their labours in 1996 via the plebiscite. At (T431) Mr Hanson asked him:

I think there is some evidence to this effect, and you can comment on it if you want to, that Karen Ehrmann by her means and whatever other means she resorted to eventually got enough votes to secure her endorsement as the candidate for Thuringowa. Having achieved that position she then transferred some voters across to Townsville for your benefit. Do you want to comment on that?

Reynolds replied:

I'm not aware of that evidence.

Shortly after this the following evidence was given:

Q. Did she never tell you she was moving or had moved some voters out of Thuringowa into Townsville?

A. Definitely not.

Q. Who would support you in the plebiscite?

A. Definitely not.

Q. Did she ever tell you she achieved enough numbers she believed to get herself endorsed?

A. No.

Q. She won reasonably handsomely, I think, didn't she, eventually or don't you know?

A. No, I think she won reasonably handsomely.

In his evidence given on 1 December 2000, Reynolds swore that he knew of no illegalities whatsoever (T2485/15).

The question is — is there admissible evidence capable of proving beyond reasonable doubt that before the plebiscite poll, Reynolds was aware of and complicit in Ehrmann's false enrolments and utterings committed in 1996 in the Townsville electorate?

Of the charges to which Ehrmann pleaded guilty, 12 only were for offences committed in 1996 and before the Townsville plebiscite concluded. The names of the persons whose enrolments were forged and uttered in 1996 were:

1. Peter Anthony Belk (2) — Counts 45, 46, 47, 48
2. James Christopher Belk — Counts 49, 50
3. Bianca Kalheri Hanns — Counts 51, 52
4. Jason Heaton — Counts 53, 54
5. Matthew Heaton — Counts 55, 56

If I am to recommend referring to the Commonwealth Director of Public Prosecutions charges against Reynolds concerning his complicity in Ehrmann's above six false enrolments, it seems to me the only possible charges are that Reynolds committed in 1996 one or more of the above 12 offences to which Ehrmann pleaded guilty, i.e. forgery and uttering; such a charge or charges could only be on the basis that Reynolds was an aider and abettor and falls within section 5 of the Crimes Act, which reads:

### Aiders and abettors

- (1) Any person who aids, abets, counsels or procures or by an act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of any offence against any law of the Commonwealth, whether passed before or after the commencement of this Act, shall be deemed to have committed that offence and shall be punishable accordingly.

Ehrmann, in her evidence to the Inquiry, never suggested any conduct by Reynolds which was capable of being construed as Reynolds having aided, abetted, counselled or procured or having been knowingly concerned in or party to the commission by Ehrmann of forgery or uttering in respect of the 1996 Townsville plebiscite. Absence of such evidence is critical in consideration of any charge against Reynolds based on complicity in Ehrmann's 1996 false enrolments.

Leaving aside the absence of such evidence from Ehrmann, there was evidence from Kevin Graham Rose that he attended a meeting of the Socialist Left faction held on 4 June 1996 at the home of Tom Greenwood in Townsville.

Before me was tendered a typewritten document headed, 'Those Known to Have Attended the Socialist Left Meeting 4 June 1996, 72 Philp Street, Hermit Park' (Exhibit 42). It includes names and addresses of 17 persons. Among those names are Simon Finn, Kenneth McElligott, Kevin Rose, Mike Reynolds, Karen Ehrmann Bill Thompson and Denise Thompson. The author of Exhibit 42 was Mark Petria who at (T541) told me he compiled the list. Petria identified Rose as the source of the information on Exhibit 42. Denise Thompson gave evidence to the Inquiry and swore she was not at the meeting and neither was her husband, Bill Thompson. The evidence at the Inquiry established that Karen Ehrmann was also not present at the meeting — it was said that Ehrmann, a member of the AWU faction, would not have attended a Socialist Left faction meeting. Rose spoke of events at that meeting. Rose's version of what was said at the meeting was challenged by other persons — Reynolds, Beverley Clare Lauder, Kenneth McElligott and Simon David Finn all of whom were present at the meeting.

In his evidence Rose said of the meeting:

- (a) Mike Reynolds said something to the effect — he couldn't remember the exact words but something to the effect that he was using his votes to support Karen and she was using hers to support him (T1437/20)
- (b) Reynolds mentioned that he had made an agreement with her to that effect, and 'there was quite a few people there that were very upset by it'; 'there were people there that threatened to resign from the party over it.' (T1437/28– 32)
- (c) Reynolds may have said something to the effect that the agreement with Ehrmann was not negotiable (T1441/20– 25)
- (d) he recalled one woman who was a member of the Thuringowa branch who 'was quite vocal about Karen Ehrmann'
- (e) that he couldn't remember this woman's exact words 'but the clear implication was that she was dodgy, that she couldn't be trusted and that she had dodgy votes' (T1437)
- (f) what he recalled was particularly people from Thuringowa who were upset at the time. (T1438/25)
- (g) the implication was that Ehrmann was basically dishonest (T1438/30)
- (h) when asked 'dishonest in what respect?', he replied, 'Well they were specifically referring to plebiscites' (T1438/35)
- (i) that he (Rose) didn't think the way in which she was dishonest in plebiscites was explained in detail (T1438/42).

Rose was asked how he himself understood the expression 'dodgy votes' and he replied:

Well, as I say I was fairly inexperienced. I wasn't sure but I understood it to mean that there would be some persons voting that weren't eligible to vote. (T1439/22)

Later, when Rose was cross-examined by Mr Devlin, Counsel for Reynolds, Rose said that he did not think there was any direct suggestion of any illegality. He also said that there was no suggestion that there was discussion that Ehrmann ‘traded in dodgy votes in terms of electoral fraud’.

Mr Devlin then questioned Rose about the suggestion of a ‘deal’:

And I’m suggesting to you that at that meeting Mr Reynolds did not say that a deal had been done with Ehrmann.

Rose replied:

As I recall he did.

Mr Devlin then asked:

Mr Reynolds did not refer to his relationship with Ehrmann as having been a fait accompli as it were?

And Rose replied:

That’s the way I understood it.

Finn, presently an organiser with the ALP Queensland Branch, in his oral evidence to the Inquiry was asked by Mr Hanson:

He’s [i.e. Rose] given evidence to the effect that it was said that Ehrmann couldn’t be trusted and she had dodgy votes. Do you recall conversations of that nature?

He replied:

That possibly was said. People in the Left did not trust Karen Ehrmann and people in the Left did believe she had — I don’t know if the word ‘dodgy’ was used but I’m happy to use it — in the sense that they were passive book members that she could control. But that’s — that would — yeah that’s quite a likely type of thing that would have been said.

Finn also said at (T1670) that there was no discussion concerning ‘fraudulent votes that Karen Ehrmann controls’.

Finn at (T1672/40) did not agree that at the meeting on 4 June 1996 Reynolds had said that the agreement with Ehrmann was not negotiable. Finn also gave evidence (T1654) to the effect that he believed that Reynolds would have contacted every person on the Townsville plebiscite list and at (T1656) said he understood that when Reynolds reviewed the plebiscite list he ‘had them all checked’.

Lauder agreed that there was no discussion concerning electoral fraud (T2441). She disagreed with Finn saying that she did not believe Reynolds would have gone to every person entitled to vote at the plebiscite (T2443). Lauder also disagreed that there was any discussion concerning an agreement struck between Reynolds and Ehrmann.

In an interview with officers of the CJC, McElligott stated he could not recall any discussion concerning ‘dodgy votes’ and denied that any ‘deal’ had been struck.

I turn now to the evidence of Reynolds given to the Inquiry on 1 December 2000 concerning Rose’s evidence:

Mr Hanson:

Q. And I take it you’ve had the opportunity of reading the transcript of the evidence that he [Mr Rose] gave here—— ?

A. Yes.

Q. —since your counsel asked him some questions on your behalf. All right. Now, I’d like your comments from the witness box on what he has to say. Now, his evidence is to this effect that at this meeting there was some discussion in relation to Mike Reynolds using his votes to support Karen Ehrmann and vice versa, do you agree with that?

A. No, that is a lie and a fabrication.

Q. His evidence goes on. There were a lot of things said, but it was basically Mike said,

I'm using my votes to support Karen. She's using hers to support me. What's your comment on that?

A. That is a lie.

Q. But is that not what happened?

A. No, that is not what happened.

...

Mr Hanson:

Q. You see, Mr Rose has come and told us that at that meeting you said you were using your votes to support Karen and she was using hers to support you, and you said that you'd made an agreement with her to that effect and that it was a fait accompli. Now, do you want to comment on that?

A. That is absolutely untrue.

Q. What was it?

A. Mr Hanson, I can't say anything further, I can't add anything further. Mr Clacy is a person of his own destiny in this regard. Can I say to you that there was never any mention of a deal or an agreement, neither was there a motion or a motion supposed. This is a figment in the imagination of Mr Kevin Rose.

...

Q. Well, according to Mr Rose's memory it wasn't quite like that at all, that the people from Thuringowa expressed distaste that Karen Ehrmann should be supporting you and that you should be in agreement with her. Now is that——? (T2473/39)

A. That's——

Q. Is that how it happened?

A. That's — no, that's incorrect. As I——

Q. All right?

A. —I believe I stated before, Mr Hanson, their main concern was that she was a candidate in Thuringowa.

Q. But how on earth did that concern your people if you weren't opposing her in Thuringowa? That's what I'm having trouble understanding?

A. Mr Hanson, that was the effect that Karen Ehrmann had on those members at that time, but I can't say anything further than that.

...

Mr Hanson:

Q. Did anybody at that meeting say anything that could have given Mr Rose the impression that Karen Ehrmann was dishonest?

A. I don't think there's anything said that indeed pointed to dishonesty. I can't remember the word 'dishonest' or even 'unethical' being used. It was more about the method she used in terms of active and non-active members or passive members.

Q. Did you hear anything that would cause Mr Rose to think that she was supported by 'dodgy votes'?

A. Definitely not.

Q. Definitely not, all right. Now, you understand that his evidence is to that effect. I take it you disagree with it?

A. I disagree entirely. If my — if you're saying that he said that there — that there was a comment about dodgy votes I believe that is an untrue statement. (T2475/33)

Mr Hanson:

Q. You see, he goes on to say that what upset these people at the meeting — these people from Thuringowa particularly — was your statement that you'd made an agreement with her and that it was a fait accompli. Now, what's your comment on that?

A. That is completely a false statement.



As can be seen there was, on the evidence, some dispute as to whether the words 'dodgy votes' were used at the meeting. The evidence as to what the phrase meant is unclear. Did it mean 'passive ALP members' whose votes at the Townsville plebiscite Karen Ehrmann was with their consent able to control? Or did it mean votes which were obtained through illegal means, e.g. forgery? Finn's evidence raises the former meaning. In any event, on the totality of the evidence one could not conclude that there was any discussion at the meeting concerning electoral fraud or illegal activity by Ehrmann.

At this stage I should also refer to further evidence given by Reynolds before the Inquiry. When asked, 'How many votes were you expecting to get from Karen Ehrmann's people?', he replied 'a number of dozen' and later said 'a couple of dozen'. Reynolds also swore, 'I saw those as all very legitimate votes' (T2482).

At the end of the day there is no evidence at all to identify:

- (a) the names of the 'number of dozen' or 'couple of dozen' voters whose votes Reynolds admitted he expected to get from 'Ehrmann's people';
- (b) whether Ehrmann received and what, if anything, Ehrmann did with the voting papers in the names of the five persons whose enrolment applications she forged in 1996.

The evidence disclosed that the actual completed ballot papers for the 1996 Townsville plebiscite were destroyed as a matter of course by the ALP General Returning Officer, and so no longer exist.

In conclusion there is no evidence (circumstantial or otherwise) to prove that before or during the plebiscite Reynolds was aware that Ehrmann was committing offences in relation to false and fraudulent enrolments of persons in the Townsville electorate and was complicit in her 1996 forgeries and utterings.

### **Possible forgery associated with the use of the ballot papers of Pitts, O'Shea and Cox**

The state of the evidence is such that if the blank ballot papers in the names of Rodney Pitts, Jane Cox and Cherise O'Shea were used in the actual ballot, then the signatures of those voters must have been forged. The taped interviews with Pitts, O'Shea and Cox and summaries of those interviews show that each of these persons knew nothing of the ballot papers posted to them at an address at 6 Eura Court, Mt Louisa, and that each did not authorise any person to exercise their votes.

The evidence of Joan Budd, the then General Returning Officer for the ALP, Queensland Branch, showed that:

- ballot papers were posted out to members eligible to vote at the plebiscite
- each posted ballot paper was accompanied by:
  - a tamper-proof, 'reply paid' envelope, addressed to a locked-bag number at a Brisbane post office
  - an instruction paper with a tear-off slip
  - an envelope marked 'ballot paper only'
- after the voter had completed the ballot paper, it was then put inside the 'ballot paper only' envelope, which was itself put inside the tamper-proof envelope
- the voter signed on the tear-off slip and this signed slip was also put inside the tamper-proof envelope, which was then posted back to the special locked bag address appearing on the front of the envelope. (For examples of these documents see Exhibits 46A, 46B, 46C and 46D).

The person having possession and control of the ballot paper could complete the ballot paper and return it to the special locked bag address in accordance with the procedure set out above. But if the ballot paper was completed by a person other than the eligible voter and returned to this special locked bag address and the vote was intended to be counted, it was necessary that the signature on the tear-off slip inside the envelope be forged.

There was evidence before the Inquiry which, if accepted, is capable of proving that these three blank ballot papers came into Reynolds possession. Peta McVean who lived at 6 Eura Court with Dennis Fox and had lived there since 1994 said that while living at that address she noticed mail turning up there addressed to people who didn't live there — she remembered names of some of the addressees and mentioned Rodney Pitt, Cherise O'Shea and Jane Cox. In evidence given on 5 October 2000 Peta McVean made the following points:

- (a) Some time in 1996 some ballot papers arrived in the letter box at 6 Eura Court.
- (b) On the day before the papers arrived she received a telephone call from a man who introduced himself as Mike Reynolds — she had not previously met him.
- (c) The man asked for Dennis [Fox] and when he found Dennis was not there he said, 'Is that you Peta?'.
- (d) In the ensuing conversation the man told her that ballot papers for the plebiscite were coming in the mail — they had been sent from Brisbane and 'you should be getting them' and 'a mole has told me that they've already just been sent to you so expect them in your mail'.
- (e) The man told her to stay home and watch for them — people were stealing them and he mentioned Mooney.
- (f) That the man told her, 'we were to get them as soon as the mail arrived and someone would come and pick them up' — she could not recall if he said who would come and pick them up.
- (g) That the man invited Dennis and her to a barbecue at his place — if he won.
- (h) That the votes arrived — she thought there were six addressed to Pitts, O'Shea, Cox, Wallace, Dennis and herself.
- (i) That she and Dennis took the ballot papers addressed to them, opened the envelopes and filled out their ballot papers.
- (j) That the other four were not opened and later on the day of arrival of the ballot papers Shane Foster came to 6 Eura Court and took away the ballot papers, completed by McVean and Dennis Fox and the four unopened ones.
- (k) That all six envelopes which arrived in the mail were the same and all appeared to come from the one place.

Mr Devlin, on behalf of Reynolds, submits that this evidence is completely consistent with Reynolds being innocent — Reynolds having given evidence himself that he had contacted many members of the ALP to warn them of the theft of ballots.

Shane John Foster gave sworn evidence on 4 October 2000. In his evidence he agreed:

- (a) that he had pleaded guilty to a number of charges of falsifying the Commonwealth electoral rolls by means of forged application forms
- (b) that one of the addresses used for the false enrolments was that of 6 Eura Court, Mt Louisa, within the state seat of Townsville.

Foster gave evidence that in 1996 five ballots went to 6 Eura Court, the house of Dennis Fox in which Fox and Peta McVean lived, that these were ballots for choosing the ALP candidate for the state seat of Townsville. He said:

The other three there was one of them that had been there in previous years. I didn't have a hand in actually getting it there but I recognised the name from previous years that was Pitts and there were two others for O'Shea and Cox and it was the first time that I had actually seen them at that address. I was — I did notice that they were at that address when I was going through a membership list with a candidate and I knew the names were Karen Ehrmann's members and I saw them linked to 6 Eura Court and I assumed that they were put there for a purpose.  
(T157)

He said the candidate with whom he was going through the list was Mike Reynolds. He said that when he noticed these names, that caused discussion with Reynolds:

I pointed out to him that if they were at that address the votes would go to him and that I would collect whatever was there and pass them on. (T158)

Foster said that subsequently Karen Ehrmann rang him and at the end of a conversation:

She reminded me not to forget to collect the ones from Eura Court. (T159/12)

He also said that earlier in this conversation:

I — asked her how she was going, did she have enough votes to win and she said she did. She could have had more except she had to give some of hers away to Reynolds.

Foster further told the Inquiry:

A. Prior to picking them up I actually rang Dennis Fox to let him know that someone was going to try and take them from his mailbox so that he was aware of it and I said to him that I would come out and collect them from him. When I got there Peta and Dennis had opened their particular ballot papers and I helped them complete the ballot forms and the ID sheet and there were three other ballot papers there and to the best of my knowledge they were unopened and I left the house with all five and I took those to my house and I waited for them to be collected. (T159/31)

Q. Now you say they were unopened, do you mean they were in an envelope?

A. In an envelope.

Q. And what made you think they were ballot papers?

A. Because all five of them were the same and the other two had been opened up and they were ballot papers. That usually is a good sign that the rest of them are ballot papers.

Q. When you say they were all the same that means——

A. The envelopes.

Q. Looking at the envelope, they all came from the same place?

A. Yeah, the same place, same time, same envelope.

Q. Same style of envelope?

A. Yes.

Foster said that he took the five envelopes to his place and waited for someone to collect them and that the five envelopes were collected by Mike Reynolds.

Mr Hanson asked Foster when they were collected and Foster replied:

A. I think it was within a day or two of me picking them up from Eura Court and I'm pretty sure it was a Saturday because I was actually home and he came to the house and he came in. My wife gave him a coffee. He'd been out doing all his plebiscite work and he appreciated a coffee. He had a quick chat with my wife, told us that he was going fine organising everything and after a few minutes of a little bit of chatter like that I gave him the — I had some other ballots there which other people had filled out and given to me and I gave him those plus Dennis Fox and Peta McVean and said, 'These are the ones that are all completed, they're fine', I said, 'and these are the ones that are not and you'll need to see Karen to look after those'.

Q. And what happened then?

A. He took them, said thanks, and continued on.

Q. Were they opened in your presence?

A. Not to the best of my knowledge, no. (T160)

Later (T162), Foster gave further evidence in relation to the three ballot papers saying:

- (a) the envelopes were sealed, had the names of the persons to whom they were addressed and had the 6 Eura Court address
- (b) that, to the best of his knowledge, he handed over the three ballot papers completely unopened and the two on which persons had already voted

- (c) that he gave Reynolds the completed ones saying, 'These are all finished'
- (d) that he had two piles and said to Reynolds, 'And these are the ones that are not finished. You'll need to see Karen to sort those ones out'. And that apart from saying, 'Thanks', Reynolds didn't say anything and took three unopened letters.

In his evidence before the Inquiry, Foster was referred to an interview conducted with CJC officers on 31 August 2000. He explained that he had told the interviewers that the three envelopes containing the ballot papers were open when he received them, but added, 'I had a little bit of doubt about it, whether they were opened or not, and I convinced myself that they were unopened'. He went on to say that his recollection when giving evidence to me was that he, 'wouldn't say I was 100 per cent certain but I'm fairly certain they were unopened'.

When Foster was first interviewed by CJC officers on 18 August 2000 he had also stated to them that the envelopes were open.

Mr Devlin, after having had Foster agree that he was sentenced in March 1999 and received a fully suspended sentence, said:

And I suggest to you that you have fabricated Mr Reynolds's involvement in this matter in order to ingratiate yourself with the investigating authorities?

Foster replied:

That's not correct. I know who came to the door and got the ballot papers.

Mr Devlin renewed his suggestion of fabrication and Foster replied:

I know who came to the house and got the ballot papers.

Ms Ehrmann cross-examined Foster and he repeated what he had said several times earlier:

I got three ballot papers of Cox, Pitts and O'Shea (T241/55).

Susan Margaret Foster, wife of Shane David Foster, gave evidence on 10 October 2000. She said that she knew her husband had gone around to 6 Eura Court and that she knew this 'because he said that he was going around to get the ballots from Dennis'. (T500).

Mr Lambrides asked her:

Q. And when did he tell you that?

A. It was around the time that there was word that ballots were going to be stolen from mail boxes. Karen had rung — he said that Karen had rung to let him know that ballots could be stolen from the letter boxes and could he go around and, you know, not to forget to go and get the ballots, so he was going to get them. (T500/45)

She was then asked:

Q. Well, do you know whether your husband went around to pick these ballots up?

A. I assume that he did because he said that he had been there to pick them up.

Q. Did he come back with the ballots?

A. Well, he came back with the ballots, yes. (T550/57)

She also said:

I didn't actually inspect them, no.

And when asked:

Well, did you see them at all?

she answered:

Just in a pile, just on the desk.

She said when asked to describe what she called a pile:

Just a few, not a big pile, just a few.

She told Mr Lambrides when he asked:

Q. Five, six?

A. Oh, maybe about that, maybe less — they just looked like envelopes — they just looked like standard envelopes and I didn't pay that much attention to them — they were downstairs in our office — Mike Reynolds came around and collected them. (T501)

She said she was there when he arrived, as were her husband and their little baby. She said Reynolds came 'only a few days' after the ballots were delivered to Eura Court (T502). She said it was in the afternoon, that she made Reynolds a coffee and had a bit of a talk. She said she saw Shane give the envelopes to Reynolds just before he left and when asked, 'Was there any discussion at that stage?', said that Shane said, 'You've got to see Karen about these ones'. (T503) She said there was no question by Reynolds in relation to that.

Susan Foster went on to say that that occasion was not the first time that Reynolds had gone to their place. She said:

Karen brought him over one night earlier in the piece when they were working out — they came over to tell us that she was running for Thuringowa and he was running for Townsville — that was the first time I'd ever actually officially met him. (T504/30)

In cross-examination Mr Devlin asked:

Q. When were you asked by any person in authority to recall and recount these events?

A. I think last week when I had a phone call from the CJC. (T505)

When Susan Foster was further cross-examined by Mr Devlin he said:

Q. You don't know what was handed to Mike Reynolds?

A. I was of the impression they were ballot papers. (T513/16)

Later Mr Devlin asked her:

Q. You observed a movement of documents from your husband to Mike Reynolds which you assumed to be ballot papers in the plebiscite?

A. Yes. (T513/53)

Reynolds when giving evidence on 9 October 2000 was asked by Mr Hanson:

Now Mr Foster's evidence is that there were five or is it six ballot papers involved in this exercise. Do you want to comment on that? Five of them, sorry, five of them? Do you want to comment on that? (T419/45)

Reynolds replied:

No.

Mr Hanson then asked:

Q. He says that he took the five of them home after collecting them from Dennis Fox and you came to his home and he gave you five ballot papers, two of them in the name of Dennis Fox and Peta McVean which were complete and three others that were unopened. Do you want to say something about that?

A. That is a lie by Mr Foster.

Q. And that as to the three that were unopened, he said to you, 'These are the ones —' firstly, sorry, we'll start again about Dennis Fox and Peta McVean, 'these are the ones that are all completed, they are fine and about the other three these are the ones that are not and you'll need to see Karen to look after those.' That's a lie, is it?

A. It's a total fabrication by Mr Foster.

Q. That you took the five of them. You said 'thanks' and you left. You don't agree with that.

A. It's a total lie and fabrication.

Karen Ehrmann also had something to say on this topic when giving evidence on 3 October 2000 and being questioned by Mr Hanson concerning a statement made by Mr Foster in November 1998 (T79/55). Mr Hanson referred her to page 4 of one of Foster's statements and said:

Q. I just want your comment on his suggestion that he sent Mr Reynolds off to see you with three blank ballot papers in his hand for Cox, Pitts and O'Shea?

A. Well, that's not how I recall it.

Mr Hanson asked:

Q. All right, well, what's your recollection?

A. I don't think Shane would have — Shane wouldn't have given any ballot papers to anyone. He would have dealt with them.

Q. Well, did Mr Reynolds ever come to you with three blank ballot papers?

A. No, he didn't. Shane would have dealt directly with me or he would have dealt with them himself. There was no need to deal with anyone else.

Counsel Assisting have submitted that on any version of events there is insufficient evidence to establish that in respect of the three ballots for Pitts, O'Shea and Cox a forgery was perpetrated by Reynolds. They base this submission on the following reasons:

- (1) The evidence does not show whether or not these three ballots were utilised in the plebiscite and he refers to evidence of the scrutineers Peter Shooter (T1632) and Simon Finn (T1655) and the evidence of the General Returning Officer Budd that the ballot papers were destroyed (T2493–4).
- (2) If those three ballots were used there remains the possibility that Ehrmann could have forged the voters' signatures without Reynolds knowledge or involvement.

To those reasons I would add the following:

- (3) Assuming that Reynolds and Ehrmann, particularly Reynolds, gave evidence to a tribunal of fact along the lines set out in the extracts from their evidence to this Inquiry, then the question would still remain, is the evidence from Mr and Mrs Foster and McVean, particularly the evidence from the Fosters, capable of proving beyond reasonable doubt that Reynolds received the three blank ballot papers, voted using one or more of the three blank ballot papers and forged signatures on the slips for each of the three ballot papers? The most that can be said of the evidence is that if the evidence of the Fosters is accepted, the blank ballot papers were last in the possession of Reynolds inside an unopened envelope. Various inferences may reasonably and rationally be drawn from that evidence. The first is that Reynolds, having control of the unopened envelopes, did open the envelope, vote on the ballot paper and forge one or more of the signatures of Pitts, O'Shea and Cox. The second is that he found the ballot papers blank and, realising they had not been completed, put them to one side and did not complete any ballot paper. One of these inferences is more favourable to Reynolds than the other, and the tribunal of fact, if faced with such a situation, is required by law to draw the inference more favourable to the accused. There is no evidence to disprove beyond reasonable doubt the inference that Reynolds simply discarded the blank ballot papers without voting.

It follows then that the evidence given to this Inquiry is not capable of proving beyond reasonable doubt any criminal offence on the part of Reynolds.

Consequently, I do not recommend that any evidence in respect of Reynolds be referred to the Commonwealth Director of Public Prosecutions to consider prosecuting him for a criminal offence.

## THE 1996 MUNDINGBURRA BY-ELECTION

The term of reference relevant to this chapter is:

1. To conduct an investigation into any alleged official misconduct, by way of conduct which constitutes or could constitute a criminal offence or offences:

...

- (b) affecting the electoral roll for the by-election for the seat of Mundingburra held in 1996;

...

### BACKGROUND

The Mundingburra by-election held in early 1996 has had some notoriety because the ALP lost the by-election and as a result there was a change of government.

It gained further notoriety at the sentence of Ehrmann in the District Court at Townsville on 11 August 2000, when she stated that she had been asked to 'take part in a situation in the Mundingburra Bi-Election [*sic*]' where people voted using forged enrolments. This allegation raised the possibility that false enrolments had been used to enable fraudulent votes to be cast at an election for the Legislative Assembly.

The circumstances leading up to the by-election were that following the State Election held on 15 July 1995, the unsuccessful Liberal candidate, Frank Tanti, filed a petition in the Court of Disputed Returns challenging the result in Mundingburra in which Kenneth Henry Davies had been elected. The petition was heard and on 8 December 1995 Mr Justice Ambrose of the Supreme Court of Queensland who constituted the Court of Disputed Returns ruled in favour of Tanti, declared Davies not to have been elected and ordered a new election for the electoral district of Mundingburra. On 12 December 1995, the Premier nominated the date for the by-election as 3 February 1996. At that by-election Tanti was successful, defeating Mooney and a number of other candidates. Mooney had been preselected as the ALP candidate for Mundingburra in the place of Davies and no plebiscite was held to choose him as the ALP candidate. In evidence to the Inquiry Ehrmann stated that at the by-election she was not willing to hand out 'how to vote' cards to support Mooney but did organise booth rosters, pre-poll voting and activity of that nature.

### EHRMANN'S ALLEGATION THAT SHE WAS REQUESTED TO WITNESS ELECTORAL ENROLMENT FORMS

In evidence to this Inquiry, Ehrmann spoke of an incident at the campaign office of Mooney during the by-election campaign when Lee Bermingham and Craig Wallace had a number of electoral enrolment forms in front of them (T60). At the time Wallace, whose full name is Craig Andrew Wallace, was employed by the Federal Member for Herbert as an adviser and was assisting Mooney in his campaign. Wallace's workplace was in Townsville. According to Ehrmann, Mooney was not present at the incident.

Ehrmann stated that Bermingham and Wallace had a discussion about electoral enrolment forms; that initially she did not take much notice of the conversation but later was asked by Bermingham to sign some enrolment forms, which had already

been filled out in pencil (T60). Ehrmann was unable to provide details of any names on the forms or the number of forms. She explained that she was requested to witness the enrolment forms although she had not seen the electors sign the forms. Ehrmann said that knowing some of the past practices of Bermingham, she refused to sign the forms. When asked by Counsel Assisting:

Why did you balk at signing those falsely when you'd done that several times in the past over the past few years?

She replied:

I might have done a few over the years — this was totally different. They were for internal party purposes and this was for a real election. I had never done anything of an illegal nature that would be used in a real election.

Ehrmann stated that this incident occurred when the campaign was in full swing and prior to the electoral rolls being closed. She could not give a more precise date. The rolls closed at 5 p.m. on 9 January 1996.

In evidence to the Inquiry, Wallace denied any such conversations with Ehrmann. He stated that he believed that the campaign office 'wasn't up and running' until after Christmas 1995 and that he had left on Boxing Day to go overseas not returning until 10 January 1996. He stated that, 'I don't think that I even went in the office until — till very much till I got back' and therefore he could not have been in the office at the time when it was claimed that the electoral forms were offered to Ehrmann to witness.

Bermingham also denied that any such conversation took place with Ehrmann. He, too, stated that he believed that Wallace could not have been in the campaign office at the time alleged by Ehrmann. He stated that he thought Wallace did not return from overseas until the day the enrolments closed or the day after.

Mooney in evidence to the Inquiry said he was uncertain when his campaign office first began operating, but believed it was some time in late December or early in the New Year. He knew nothing of the incident described by Ehrmann. He stated he was not aware of any improper practices involving the by-election.

Whether or not the conversations took place as Ehrmann suggested, there is no evidence to indicate that any false enrolments resulted.

## **THE ELECTORAL ENROLMENTS OF ROBERT AND ENID BRADSHAW AND BIANCA HANNS**

Ehrmann gave evidence to the Inquiry of a further incident involving Bermingham in relation to the Mundingburra by-election. She stated that on the same day as the 'request to witness electoral forms' incident, but during a separate conversation, probably beforehand, Bermingham asked her if Robert and Enid Bradshaw were strong supporters of hers and she told him they were (T64). She said she came to believe that as a result of this conversation the Bradshaws may have been moved into Mundingburra for the by-election. Ehrmann said that the basis for her belief that something improper may have been done in relation to the Bradshaws came to her knowledge some time after the election. She explained that a member of her ALP branch who lived in the seat of Mundingburra and who worked at the post office said that a person had come into the post office complaining because mail was arriving at his house in the Bradshaws' name and he had lived there for 20 years and he did not know them.

Bermingham denied any improper activity concerning the Bradshaws. Enquiries with the Australian Electoral Commission established that Enid Bradshaw was already enrolled in Mundingburra from May 1995 and Robert Bradshaw was enrolled in Thuringowa and not in Mundingburra at the time of the by-election.

Ehrmann in her evidence also referred to a woman named Bianca Kalheri Hanns, who she stated she noticed had been enrolled in Mundingburra at the time of the by-election. Hanns was one of the persons whose name Ehrmann had earlier pleaded guilty to having forged on an electoral enrolment form in 1996. Ehrmann also pleaded



guilty to having uttered this forged form. These offences occurred in July 1996. Ehrmann stated that when police showed her an enrolment form dated 3 February 1996, Hanns was identified as a tax officer when she was not one. Ehrmann did not know who was responsible for this enrolment, a copy of which is Exhibit 81A.

Australian Electoral Commission records show that on the date of the by-election an application was made in the name of Bianca Hanns to enrol in Mundingburra. Hanns acknowledged to CJC officers that at the time of the Mundingburra by-election she had intended to vote but had found that she was not enrolled. She then lodged an enrolment application showing a Mundingburra address (see Exhibit 81A dated 3 February 1996).

In the above circumstances there is no substance to the suspicions raised by Ehrmann concerning the Bradshaws or Hanns.

## THE ELECTORAL ENROLMENT OF CRAIG WALLACE

Apart from the specific matters referred to above, Ehrmann gave evidence that there was general talk around the party that people in Brisbane and other parts of Queensland were being telephoned and asked to supply names of people who could be enrolled to vote in the Mundingburra by-election without taking up residence.

In this regard, Ehrmann stated that she could recall one incident in Mooney's campaign office which involved Wallace and a number of other people. She said it occurred some time during the Mundingburra by-election campaign before the rolls closed. She stated that she heard a number of jokes and discussions about enrolling people in Mundingburra. She said that she did not recall the particular names discussed. She gave evidence that Wallace 'skited' that he had had a few too many drinks one night and had slept over at Denise Thompson's place and so was legitimately enrolled there. Ehrmann went on to say that Wallace said that he enrolled in Mundingburra to vote at the by-election. Ehrmann confirmed that Wallace was enrolled at that address when she subsequently checked the electoral roll.

In his evidence Wallace agreed that he had completed an electoral enrolment form dated 13 December 1995 to have his enrolment address changed to 19 Winifred Street, Mundingburra. The form is witnessed by Denise Thompson and lists her address at 19 Winifred Street. Wallace stated that he may well have enrolled 'at the behest of the Electoral Commission' after 'the judgment of the court had declared the former election invalid'.

Wallace explained in evidence that he moved his residence to Mundingburra in October 1995 because he was having difficulty travelling between his parents' home at Home Hill and Townsville where he was working. He further explained that Thompson, with whom he worked, offered him the opportunity to stay at 17 Winifred Street, a property owned at the time by Thompson's mother. This house was next door to the home of Denise and Bill Thompson at 19 Winifred Street. Wallace stated that at the time that he resided at 17 Winifred Street, only he and Thompson's elderly mother, who has since died, lived there.

Wallace claimed from the witness box that he made a mistake when he filled out the application for the electoral enrolment form showing his address as 19 Winifred Street. He indicated in evidence that he thought at the time the house in which he was living was 19 Winifred Street as it was close to the Thompsons' house.

Wallace agreed that he had told CJC investigators, in a recorded interview prior to giving evidence before the Inquiry, that he 'moved into Mrs Thompson's house in Winifred Street'. When asked to explain this he said that it had simply escaped his mind. He denied boasting to Ehrmann that he had enrolled at Thompson's place at Winifred Street on the strength of having slept there on one occasion.

Denise Thompson stated that Wallace had resided at 17 Winifred Street with her elderly mother and her uncle. Wallace in evidence did not mention any person other than the elderly mother residing at 17 Winifred Street. Denise Thompson stated that as far as she knew Wallace had lived there as she had seen him leave for work and on

occasions she and Wallace would travel together to and from the office where they both worked.

Bermingham said that he believed Wallace lived at 17 Winifred Street. He further said that he had dropped Wallace off on one occasion and Wallace had told him that he had spoken to Denise Thompson about Townsville being too far from Home Hill, where Wallace's parents lived.

Despite the above discrepancies, the evidence, in my view, could not establish beyond a reasonable doubt that the enrolment at 19 Winifred Street was false. In any event, because of the statutory time bar, no prosecution action can now be taken.

## **EHRMANN DISCUSSES THE MUNDINGBURRA BY-ELECTION WITH JOAN BUDD**

Ehrmann gave evidence to the Inquiry of a conversation that she had with Joan Budd about people being moved into the Mundingburra electorate for the by-election. Ehrmann stated that after she had been charged with her offences Budd offered her free accommodation at Budd's home near Brisbane. According to Ehrmann, Budd asked her whether any of her charges had anything to do with the Mundingburra by-election. Ehrmann stated that Budd told her that she was aware that people had telephoned different parts of Brisbane and asked for names to be falsely enrolled in the Mundingburra electorate to vote in the Mundingburra by-election. Ehrmann said that Budd told her that if she told anyone of their discussions Budd would deny it.

In her evidence to the Inquiry Budd did deny any such conversation and claimed that she told Ehrmann that one of the conditions of her staying at her house was that she was not to discuss her case. Budd gave evidence that on a particular evening when Ehrmann was fairly upset and Budd's husband had gone to bed, Ehrmann had started telling her about Mundingburra. According to Budd, Ehrmann told her that it was unfair that she had been charged as she was only transferring people back to their rightful place after she had been asked to put them into Mundingburra.

Budd explained that she was 'absolutely shocked' for two reasons. The first was, that she realised that Ehrmann must have been guilty of the offences with which she had been charged. The second was because two years previously, in early 1996, she had been telephoned by Ross Musgrove who told her that he had been telephoned by Bermingham and asked to put numbers into Mundingburra. According to Budd, she did not believe it but warned Ross Musgrove, 'do not touch anything that Lee's involved in with a barge pole'. Budd stated that she had never heard anything like that being done by the party and had dismissed it as 'absolute rubbish'.

Ross Musgrove gave evidence to the Inquiry that he could not recall any conversation with Budd to the effect alleged by Budd. Furthermore, he could not recall having such a conversation with Bermingham. Bermingham, too, denied having such a conversation with Ross Musgrove, whom he said he never considered to be a friend. Ross Musgrove said that the feeling was mutual.

## **THE ELECTORAL ENROLMENT OF KERRIE-ANN BROWN**

When this witness entered the witness box on 27 October 2000 she was legally represented. I advised her that she could refuse to answer questions on the ground that to do so would incriminate her and after she made such claim I directed her to answer questions.

In her evidence to the Inquiry Brown admitted enrolling herself at her grandmother's address in Mundingburra on 18 December 1995 when in fact she resided outside the electorate of Mundingburra. Her electoral enrolment form (Exhibit 168) is witnessed by Craig Andrew Wallace. Brown said that she believed he witnessed her signature. Wallace's signature is distinctive and is similar to the signature on the enrolment form for Wallace at 19 Winifred Street, Mundingburra. Wallace incidentally showed his address as witness on Exhibit 168 as 19 Winifred Street, Mundingburra, and not 17 Winifred Street.

Brown stated that she started her active involvement with the ALP when she started seeing her former boyfriend, Steve Wilson. She said that when she filled out the false enrolment form she was a member of the ALP and also a member of the AWU faction. She stated that at that time she was living at 31 Gilbert Crescent and Bermingham, who was also residing at that house, requested that she should enrol at her grandmother's house in Mundingburra to enable her to vote at the by-election. She indicated that she enrolled and ultimately voted at the by-election in February 1996.

Brown went on to say that some time after the by-election she moved into her grandmother's house and stayed there until she moved into 17 Melton Terrace, Townsville, which was owned by Anne and Jim Bunnell. Her enrolment form moving her to Melton Terrace (Exhibit 17) was witnessed by Andrew Kehoe who, she said, asked her to change her enrolment when she was living at 17 Melton Terrace.

Enquiries conducted by the CJC established that the electricity account in Brown's name was connected at 17 Melton Terrace on 11 October 1996. Exhibit 17 is dated 9 October 1996.

Bermingham claimed that it was her former boyfriend, Steve Wilson, who may have asked Brown to enrol. Wilson was, and is, in London and has given no statement to the CJC.

Any prosecution relating to the enrolment of Brown for the Mundingburra by-election is now not possible because of the time limitations. At this stage I should also say that I am satisfied that towards the end of 1996 Brown did reside at 17 Melton Terrace.

## THE ELECTORAL ENROLMENT OF UDO REEH

Reeh gave evidence on 27 October 2000 and 20 November 2000. He asked for and had the assistance of an interpreter fluent in the German language, although he clearly understood many questions spoken in English and answered in English.

Reeh acknowledged that on 3 January 1996 he did falsely enrol in the electorate of Mundingburra at 26 Swailes Street, Mundingburra. He also stated that he voted for Tanti with whom he said he was acquainted at that time and whom he had employed. Reeh stated that on occasions Tanti had been to his house at Katie Court, Rasmussen. Rasmussen is beyond the electorate of Mundingburra. Reeh stated that he distributed letters and 'how to vote' cards for Tanti on the day of the by-election. Reeh claimed to have told Tanti that he had voted for him sometime after the election. He stated that Tanti did not respond when he was told.

In the course of examination of Reeh by Counsel Assisting, the following exchange took place:

Mr Hanson:

Q. Did Mr Tanti have anything to do with what you'd done by way of moving your enrolment?

A. Yeah, I did it, you know. (T1470)

Q. Did Mr Tanti have anything to do with it? Did he ask you to do it?

A. Not really. It would be nice if we had some more votes, something like that.

Q. Some more votes?

A. Yes. Did he somehow hint that you should do this, did he? — Not — not really.

Q. Well, did you know what to do to get him more votes

A. Yeah. I didn't even know it was an offence for things like that.

Q. But did you know how to go about this, to simply put in a form and change your address and then you could go and have a vote. Did you know all of that or did somebody tell it to you?

A. No, I put that in.

Q. Did somebody tell you how to do this, change your enrolment? Did somebody tell

you that or did you dream that up for yourself

A. No, I didn't.

Q. Well, did somebody tell you that this was the way it can be done to get more votes?

Chairman:

Yes, Mr Reeh, go on.

Mr Hanson:

Q. Mr Reeh——?

A. Yes.

Q. Did Mr Tanti tell you? I'm sorry?

A. It's not really, it — asked, yeah, over — I didn't know what came on me otherwise I wouldn't have done it.

Chairman:

Q. Well, you mightn't have known what came over you——?

A. Yeah.

Q. ——but why did you do it?

A. Yeah, stupidity.

Q. Where did you get the enrolment form from?

A. They were everywhere.

Q. Pardon? They were everywhere?

A. Yeah.

Chairman:

All right. Go on, Mr Hanson.

Mr Hanson:

Q. Look, didn't you get the enrolment forms from Frank Tanti?

A. No, I don't think so.

Q. Now do you — sorry, were you going to say something else?

A. The enrolment papers, they were everywhere.

Q. Do you remember last time you were here giving evidence, we stopped after you said you wanted to go and get some legal advice?

A. Yes.

Q. And you left this hearing room and went outside with the interpreter. Her name was Christa Cave, do you remember?

A. Yeah.

Q. You went outside with her and with Mr Lambrides, sitting here beside me——

A. Yeah.

Q. ——and one of the investigators from the Commission also, Mr Pignat. Do you remember that?

A. Yeah.

Q. Now I'm suggesting to you, Mr Reeh, that in the presence of all of those people you said, 'I was working for Frank Tanti. He gave me some enrolment forms to fill out. He said he needed more votes.' Now did you say that in English just outside this hearing room last time you were here?

A. Don't remember that.

Q. Would that be true if you said that on that occasion?

A. Yeah.

- Q. Did Mr Tanti give you the enrolment forms to fill out?
- A. No. I can't recall that he give me something.
- Q. Did he say he needed more votes?
- A. Every party that need it.
- Q. I'm sure they do but did Mr Tanti say he needed more votes? Did he?
- A. I can't recall that.
- Q. All right. Did you speak in German then Christa Cave?
- A. Yeah, we did English and German.
- Q. What did you say to her about this?
- A. I don't know any more. We got that on paper.
- Q. We'll see. You were interviewed in November as we know in your solicitor's office in Townsville, correct?
- A. Yeah.
- Q. All right. Now, on that occasion you were asked about this, weren't you? You were told on that occasion that it was said that you had, outside this hearing room, spoken those words, do you recall that?
- A. Which words?
- Q. 'Frank said he needed more votes'?
- A. Yeah, could be.
- Q. I think your response when you were questioned by the investigators in your solicitor's office was, 'In hindsight I wouldn't have done it'?
- A. Yeah.
- Q. Is that right?
- A. Yes.
- Q. And you say the same thing today?
- A. Yeah.
- Q. That you did it because Frank Tanti asked you to do it, didn't you?
- A. I don't know that any more.

Tanti said in evidence that he knew Reeh and had worked for him and they had been good friends. He denied any suggestion that he had asked Reeh to move into the Mundingburra electorate because he needed votes. He further denied that he even hinted at such a thing or that he provided any electoral enrolment forms to Reeh.

Any prosecution action in relation to the enrolment of Reeh at 26 Swailes Street is now not possible because of the statutory time bar.

## THE ELECTORAL ENROLMENT OF DAMIEN LUNNEY

Tendered before me was an electoral enrolment form in the name of Damien Lunney moving him into the Mundingburra electorate. Lunney is the nephew of Bermingham and the son of Councillor for East Brisbane, Catherine Bermingham.

In oral evidence to the Inquiry Lunney stated that during the by-election he lived in Townsville for about two months. He indicated that he had been sent to help out at the by-election and stayed with a couple of people, including Andrew Kehoe, at whose premises he was enrolled (see Exhibit 31 dated 2.10.95 for the relevant enrolment form). He said he stayed at Kehoe's house a couple of times and voted at the Mundingburra by-election, returning to Brisbane not long afterwards.

Kehoe acknowledged assisting Lunney to complete the enrolment form (Exhibit 31). He acknowledged that he filled the form out for Lunney to sign and then witnessed the enrolment. When Kehoe first gave evidence, he stated that Lunney had put his bags in

the house for a couple of days and then moved into a caravan, which was 30 metres away from the house. Kehoe stated that although Lunney did not remain at his premises he was intending to do so when the form was completed. The form appears to have been signed by Lunney on 2 October 1995, the date on which, according to the exhibit, he commenced living at Kehoe's address. This form was not lodged with the Australian Electoral Commission until 22 December 1995 and after the judgment of Mr Justice Ambrose. Kehoe stated there was no political reason for Lunney enrolling.

When Kehoe gave evidence on a later occasion he stated that Lunney did not move immediately into the caravan, but lived there from time to time. He also stated that Bermingham had asked him to enrol Lunney or put him up.

In his oral evidence at a public hearing Bermingham confirmed that Lunney was employed by the ALP on the Mundingburra by-election campaign. Bermingham acknowledged that it possibly was at his request that Lunney had enrolled, but that his nephew was intending to move to Townsville because he wished to 'start up again' [his life]. Bermingham denied that the purpose of the exercise was to have Lunney vote at the by-election.

No matter what view of the facts is taken, prosecution action is no longer possible because of a statutory time bar.

## GENERAL ENQUIRIES AND CONCLUSIONS

Apart from the specific matters raised by Ehrmann and to which I have referred in this chapter, because of the obvious significance of the Mundingburra by-election and the fact that these were the only allegations that related to an election as distinct from a preselection of the ALP, a more detailed analysis was conducted by investigators of the CJC.

From the experience gained by investigating some of the other terms of reference it became apparent that in many cases, if not the majority of cases, where false enrolment was for the purposes of the preselection, within 12 months the false enrolment had been rectified. Consequently, the CJC sought from the Electoral Commission Queensland a list of all electors who had enrolled in Mundingburra in the time between the decision of Mr Justice Ambrose on 8 December 1995 and the closing of electoral rolls for Mundingburra on 9 January 1996 but who had their electoral enrolments changed again before the end of the 1996 year. It was considered to have been a fair assumption that by the end of 1996 any fraudulent enrolments would have been deleted and the enrolments of the electors concerned returned to the correct addresses and the correct electorates.

The Electoral Commission Queensland generated a list containing names of approximately 140 persons who fitted this criterion. The CJC conducted property, electricity and driver's licence checks in relation to each of these persons and the respective address. This process generated the names of Kerrie-Ann Brown, Udo Reeh and Damien Lunney. None of the other transactions proved to be false enrolments.

Apart from the enquiries with the Electoral Commission Queensland, the CJC compared the names of the approximately 140 electors with the names on the ALP membership list as at 11 April 1996 for the Federal Seat of Herbert. Only one person was on both lists, Kerrie-Ann Brown.

The CJC also requested the Electoral Commission Queensland to prepare other reports in relation to the full list of electors for the Mundingburra by-election. These reports related to the following:

- enrolment addresses and electors names where enrolment exceeded four electors at the same enrolled address
- enrolment addresses, postal addresses and electors names where there was more than one surname at the same postal address or there were electors with different enrolled addresses at the same postal address.

Analysis of this information by officers of the CJC failed to establish that any of these enrolments suggested any impropriety.

The Electoral Commission Queensland also carried out a comparison between the Mundingburra by-election electoral roll and death registration data provided by the Registrar General for the area of the Mundingburra electorate. On analysis of this material there was no evidence of voting in the name of any person who had died prior to the by-election ('cemetery voting').

In conclusion, these general enquiries made for the purpose of investigating the Mundingburra by-election (within the term of reference) revealed little to suggest that there had been widespread use of fraudulent enrolments. This is consistent with the overwhelming evidence before me that the vast majority of false enrolments on the electoral rolls were orchestrated for the purposes of internal party politics and not for the purposes of local government or Legislative Assembly elections.

## THE 1993 PLEBISCITE FOR THE BRISBANE CITY COUNCIL WARD OF EAST BRISBANE

The term of reference relevant to this chapter is:

1. To conduct an investigation into any alleged official misconduct by way of conduct which constitutes or could constitute a criminal offence or offences:  
...  
(c) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor Party to select its candidate for the Brisbane City Council ward of East Brisbane; ...

### BACKGROUND

The genesis of this term of reference and the following one relating to the Brisbane City Council ward of Morningside can be found in an internal discussion paper prepared in 1994 by the Socialist Left faction of the ALP and forwarded to the CJC for consideration. That document is Exhibit 178. The CJC's inquiries suggest that the document was written by Hamish Linacre, who died before the Inquiry began.

The document commences:

In 1993 two disputed BCC ward preselections (East Brisbane and Morningside) highlighted inadequacies in the Queensland [ALP] branch rules.

Later in the document the following paragraph appears:

Certain incidents that came to light in the recent disputes, i.e. forging of enrolment cards, false address enrolments and suspected alteration of ballot papers, clearly demonstrate that there are elements in the Party who are prepared to go to extremes of committing criminal offences in an effort to win ballots. Bearing in mind that postal ballots are the easiest to rort, it would be preferable to avoid them altogether where possible.

The document continues:

There is an impression within the Party that using the electoral rolls controls persons using false addresses to rig plebiscites. The BCC ward preselections demonstrated what a fallacy this is. If a survey of the amount of members who changed their electoral enrolment prior to the close of nominations was done it would reveal that a substantial number of ALP members were strategically stacked into certain wards.

Changing an address on the electoral roll is simply a matter of filling out a form and dropping it into the relevant office. However, false or illegal the reality is the Federal Police do not make unprompted investigations every time an enrolment is changed.

In the above extracts, the 'disputes' referred to are referrals to the ALP Disputes Tribunal by aggrieved candidates for preselection.

The two candidates for the 1993 preselection for the ward of East Brisbane were Robyn Lorraine Twell and Kerry Marie Rea. Robyn Twell had previously been the Brisbane City Council councillor for the ward of Fairfield and Kerry Rea had been the Brisbane City Council councillor for the ward of Ekibin, but those two wards largely disappeared in a redistribution of boundaries for council wards at that time.



Rea and Twell gave evidence before me on 20 November 2000. Rea stated that she was a member of the Queensland Left faction and, according to Lee Bermingham, Twell was a member of the AWU faction.

On 13 August 1993 the nominated preselection ballots for East Brisbane closed. A postal ballot was held — Twell won. On 15 August 1993 the Electoral College met and Twell was declared the winner. By letter dated 26 August 1993 Rea lodged with the ALP Disputes Tribunal a notice of dispute (Exhibit 182) in relation to the conduct of the preselection. The minutes of the Disputes Tribunal held on 20 October 1993 (Exhibit 186) in relation to the matter show the appeal was dismissed. Twell was subsequently elected to the Brisbane City Council on 26 March 1994 and remained a councillor until 1997.

In line with the ALP rules all records from the plebiscite have long since been destroyed.

Rea told me that in 1993 when she lodged her dispute with the Disputes Tribunal she had been told that members of the AWU faction had been involved in electoral fraud by boosting their numbers in the plebiscite. She said her understanding of electoral fraud would be where someone had deliberately enrolled at a particular address at which that person did not reside (T1513). She stated she was never told who may have been responsible. Rea said that as far as she was aware she had never heard at the time of any suggestion that her faction had indulged in conduct of that type. Rea acknowledged that after originally lodging the dispute she gave notice of intention to amend her claim (see Exhibit 183). This amendment included the following:

The applicant alleges that the State Secretary [Michael Kaiser] and Assistant State Secretary [Lindesay Jones], by mutual agreement, excluded from the plebiscite list a number of members who were, prime facie, eligible to vote ...

Rea explained that the amendment was made to ensure that the Party rules permitting a dispute to be heard had been satisfied by raising the possibility that the number of people entitled to vote who did not vote may have affected the outcome of the plebiscite.

Twell told me that her campaign was directed by Lee Bermingham with Warwick Powell involved in the campaigning. She stated that she had no evidence that Powell or Bermingham were involved in electoral fraud in 1993 (T1529) and said she had not heard of any allegations against them until around 1996 after the Mundingburra by-election. She said that she had never raised with Bermingham or Powell or anyone else in the Party the question of electoral fraud in 1993. She denied being involved in any electoral fraud and said she was not aware electoral fraud was occurring. She stated that although in the course of the dispute allegations were raised that electoral fraud had occurred, she was told by Bermingham that there had not been any and she believed him. She could not recall any specific conversations with him (T1531/60).

## THE EVIDENCE OF LINDESAY GORDON BAUER JONES

Jones gave evidence before me on 21 November 2000 telling me that in 1993 he was the Assistant State Secretary of the ALP and a foundation member of the Socialist Left faction. Jones said that in 1991 he became Assistant State Secretary and Kaiser was then the State Secretary. Jones went on to say that he supported Rea in the 1993 contest with Twell (T1566). He said he had been in the Party a long time and knew the membership not only in East Brisbane but across the State, having travelled extensively. He told me that when he first received a copy of the plebiscite list for East Brisbane he had a good look at it and thought it looked 'very dodgy'. He believed that there were 30 or 40 more names on the list than he had expected. He said:

One thing that struck me about that plebiscite list was that there was a raft of people on it that belonged over in the Annerley area in what was — the Chardons Corner branch. (T1571)

He added:

Also beside those names was telephone numbers that had area codes that weren't East Brisbane.

Jones stated that he made a number of enquiries and then compiled a list of persons he believed were not entitled to be enrolled (part of Exhibit 184). Jones said he had a meeting with Michael Kaiser and Bermingham and told them that his faction 'wasn't coping it'. Jones said that he could not recall any suggestion that the Left faction had behaved in the same manner as Bermingham had suggested in his evidence. Jones denied these allegations by Bermingham.

Jones said that on another occasion after his first meeting with Kaiser and Bermingham he and Kaiser sat down and discussed the names on the plebiscite list to which Jones objected and he, Kaiser, agreed that about 21 names be taken off the list. He said there were probably more than the 'about 21' who were not entitled to vote, but he considered himself to be a 'political realist'. He said that if some of the names were taken off the list that would give Rea some chance of success. Jones denied Bermingham's claim that about 10 names were knocked off each of Jones' and Bermingham's lists.

According to Jones, Kaiser had not been State Secretary for a long time and at their first meeting Kaiser 'expressed the opinion that he wanted quiet plebiscites' (i.e. 'no problem'). Jones acknowledged that the steps he had taken to have the names taken off the plebiscite list were premature. He added that both Kaiser and he had agreed that if any of the persons taken off the list turned up to the ALP office and established their entitlement to vote they would be added back on to the list. Jones said that none of them did turn up and claim a lawful entitlement to vote at the plebiscite.

## THE EVIDENCE OF LEE MICHAEL BERMINGHAM

On 22 September 2000 when Bermingham was initially interviewed by officers of the CJC he denied any involvement in electoral fraud in relation to the 1993 plebiscite or any other. However, when he was questioned on oath both in the in-camera hearing on 20 October 2000 and subsequently in the public hearing on 4 December 2000, and after claiming privilege against self-incrimination and being directed to answer questions, he did admit involvement and he implicated a number of other people. When asked by Mr A MacSporran, Counsel for Kaiser, to explain this apparent change in attitude, Bermingham said that he commenced to remember things more clearly as he reflected upon them after the initial interview. He added that when he was first interviewed on 22 September 2000 he was unaware of what it meant to encourage others to engage in electoral fraud and 'did not understand that that in itself was against the law' (T2716).

When Bermingham gave evidence at the in-camera hearing on 20 October 2000 he acknowledged in what might be thought a somewhat reluctant way his involvement in 1993 in false enrolments in the ward of East Brisbane (T60–62). Bermingham's earlier evidence included:

Mike came into my room, into my office, and said, 'What are you doing about East Brisbane?' and I said, 'What do you mean?' He said, 'Well, Lindsay Jones is out there doing,' you know, 'Getting the numbers and doing,' you know, 'Starting to work for Kerry Rea's side. What are you doing? You've got to go and,' you know, 'Start getting involved in it.' So that was, you know, the initial involvement, you know, where I was — I take that as an instruction from Mike to get out and get actively involved in making sure that we win the plebiscite. (T58)

And later at the in-camera hearing Bermingham said (T59):

- A. Now, I was never confident that we could win a plebiscite in East Brisbane because it wasn't our territory so to speak. We, you know, didn't know the branches there that — very well. And I think I — my perception was that the left, and Lindsay Jones understood the branches in that area better than we did so it was a very difficult position to be in. I thought that, you know, naively that when you were an organiser you shouldn't get involved in these things too deeply. I was a friend of Robyn's. I'd in fact talked Robyn into running in Fairfield where she was a councillor initially and became a councillor there and was, you know, a bit distressed about the fact that we'd be locked into East Brisbane, but indeed we had. So, my point about that is that when I was instructed by Mike Kaiser to get heavily involved in it, and indeed he'd asked me — you know, he would monitor the process from time to

time to see how it was going, to see what, you know, I thought was happening on the ground. When things became very, very tense was when Lindesay Jones — the plebiscite lists get — when you get an original plebiscite list at the beginning they're constantly updated as people discover that there's party members that haven't been put on it——

Q. Yes, we've heard evidence that complaints can be made——?

A. Yes, that's right.

Q. ——and people can be ruled on or ruled out but it generally, I understood, was done by the GRO?

A. It is done by the GRO but the State Secretary is privy to that information.

Q. Yes?

A. What happened with — and all sorts of candidates receive the updated list as well so I was quite conscious of the fact that they were updated. I felt that we couldn't possibly win in East Brisbane initially when I started but, you know, we were going to give it a good fight and Lindesay Jones was representing, Kerry Rea was, you know, fighting pretty hard as well and there was a whole psychological war and stuff that went on in relation to that. But eventually Lindesay objected to the fact that we had put on numbers, you know — he thought excessive numbers, you know — or — in any plebiscite you might end up with a six or a seven extra people coming on from either side.

Q. Do you mean included falsely?

A. Sorry?

Q. Falsely enrolled, is that what you mean?

A. No, I didn't say that.

Q. Well, what do you mean by 'putting people on'?

A. Putting people on, finding people who are actually — as we talked about before in Townsville, you start off with branch lists and so on, the party does roughly the same thing though it gives its computer an instruction to pick out people who are in that electorate. But some — for various reasons a whole lot of people don't get picked up by that plebiscite list; you'd have to ask a computer expert as to why. I don't know why, but there's always this process of trying to make the plebiscite list more accurate and the process there is that each candidate can apply to have certain people put on.

Q. Right?

A. Or, you know, a campaign director or somebody involved in it can apply to get people added on to the list so that was the process that was happening. But in East Brisbane there were a lot of people going on, you know, both from my side and from Lindesay Jones' side, so Kaiser also became involved at that level and that's the meetings that he made reference to in his evidence and that was that Lindesay Jones had objected to the number going on from my side and indeed I objected to the number going on from his side. And we sat down and tried to arbitrate a situation where we wouldn't count certain people, you know, and I think we basically ruled out about ten of each others or it might have been 15 but a considerable number, I can't remember exactly. So Kaiser was involved in all those meetings as well and so that's what the reference is. I mean I'm simply making the point that one, I — you know, I was working for Mike Kaiser. I wasn't an organiser free to go and do what I wanted. He had knowledge of what was going on; I'm not saying that he had a day to day knowledge of every single thing, but he knew that, you know, numbers were being put on by both sides.

Q. Falsely, do you mean?

A. Well, what do you mean by falsely?

Q. Well, what do you mean in this note written by your solicitor, I understand, not by you, 'stacking, actively involved in monitoring stacking for a plebiscite, encourage stacking——'?

A. Yes, stacking, yeah. Well, stacking isn't necessarily anything to do with false enrolments. Stacking means stacking, putting people in, people who can legitimately vote there, you know.

- Q. Well, does note number 11 then deal with nothing improper? I mean why are we wasting our time talking about it?
- A. Well, that's for you to make an assessment not me but——
- Q. Do you mean to convey by note number 11 that Kaiser was a party to something improper?
- A. I'm making the point that Kaiser was aware of what was going on.
- Q. But aware of something improper?
- A. Well — well, improper in the sense that he would have been aware of the fact that people were being shifted from one part of the city to another.
- Q. Falsely enrolled whether with your knowledge or otherwise?
- A. Well, I suppose. I don't think he's a fool. I think he'd have an idea.
- Q. Well, are you telling us then, does note number 11 represent——?
- A. Yeah.
- Q. ——is it a summary of your evidence to be to the effect that Kaiser was aware that people were being falsely enrolled in East Brisbane?
- A. Yes.
- Q. And his awareness comes because of what you've just been telling us now?
- A. Yes.
- Q. His involvement in the discussions beforehand?
- A. His — yeah, that's right. His involvement in the process of arbitrating between both sides.
- Q. Are you telling us then that he was aware that people were being falsely enrolled by both factions in support of each candidate?
- A. Yes. (T61)

It is fair to say that in this evidence Bermingham does not suggest that Kaiser gave him specific instructions to have persons falsely enrolled in the electoral roll to ensure their entitlement to vote at the plebiscite.

When Bermingham gave evidence at the public hearing on 4 December 2000 he again acknowledged his involvement in false enrolments. Commencing at page 2528, the transcript records that he gave the following evidence:

- Q. All right. So how did this plebiscite proceed? Anything improper occur to your knowledge?
- A. Well, yes, I have knowledge of the fact that people were improperly enrolled at various addresses in East Brisbane for purposes——
- Q. At various what, addresses?
- A. At various addresses in East Brisbane for the purposes of the plebiscite.
- Q. How do you know that?
- A. I asked for some assistance from a number of Young Labor people to put people on, either to try and move them into the address or get them enrolled in that — in East Brisbane so that they could vote in the plebiscite for Robyn Twell.
- Q. When you say move in, do you mean physically move into the electorate?
- A. I think there was an attempt for some people to physically move in but by and large it was simply people falsely enrolling.
- Q. And you, you said, asked some young people, did you, to help with this task?
- A. I did, yes.
- Q. Who were they?
- A. Warwick Powell and Grant Musgrove.
- Q. All right. And——?
- A. And probably Joe Felice though I can't — yep.

Q. And did they do so, do you know?

A. I believe they did, yes.

Q. Any idea of the numbers?

A. I think it was probably about 18 or 19 people that were moved into the area, you know, falsely enrolled for the purposes of that plebiscite. (T2528)

Bermingham was then asked whose idea it was to place the extra people onto the plebiscite list and he answered in the following way:

I think that's difficult to answer in the sense that I was sitting in my office after the plebiscite had started and I was working on preparing audits for various council campaigns when Mike Kaiser came into my office and said, 'What the fuck are you doing here,' you know, 'Get out. Lindsey Jones is out there putting on people for the East Brisbane plebiscite. We've got to win that plebiscite so get out and do what you have to do.' And I think from that I then contacted people and worked out ways to try and increase the membership for the plebiscite list. (T2529)

In cross-examination by Mr MacSporran (Counsel for Kaiser), Bermingham gave further evidence bearing upon the possible involvement of Kaiser:

And I make the point that Mike Kaiser became quite aware of this process. If you imply that he wasn't aware of it then he was certainly aware of it by the Disputes Tribunal. (T2720)

And later in questioning by Mr MacSporran:

Q. You know the difference between saying that 'Mike Kaiser came to me and said, "Go out, Lee, and sort the roll"', you understand that might be one view of some evidence? You understand that? That's what you're effectively trying to say, don't you? That's your current version, isn't it, Mr Bermingham; Kaiser directed you to go out and sort the roll?

A. My evidence was, and my evidence still is that Mr Kaiser instructed me to go out and put the numbers on. When I asked other people to do the same I didn't go out and say, 'Sort the roll,' but indeed I understood that's what they were going to do; that's my point. (T2726)

And later again in questioning by Mr MacSporran:

Q. You want to have two bob each way, do you?

A. I don't think that's two bob each way. It's just saying, as I have pointed out before, when I ask people to put on the rolls — put people on a plebiscite list to put on the numbers, I understood that it would involve both legitimate and illegitimate activities. I didn't spell that out to people, I didn't go and say, 'You know, sort the roll.' I don't think that's the sort of language which people give these sorts of instructions in. That's my point and that's why I think there's no inconsistency between the two lots of evidence.

Q. So nothing was said to you directly by Kaiser on your evidence, directly implying for you to go out and commit illegal activities in respect of this plebiscite?

A. Mr Kaiser gave me the instructions to put people on, put the numbers on, and that's what we proceeded to do on his instruction.

Q. And you——?

A. We had subsequent discussions about it, time to time, as I called monitoring, where he was quite aware of what we were doing. (T2727)

Bermingham stated that he could not recall signing any false enrolments himself in 1993, but acknowledged in relation to an earlier enrolment lodged with the Australian Electoral Commission on 28 March 1991 (Exhibit 113) in the name of Andrew Francis Linden that he witnessed what was a false enrolment.

Bermingham told me that he believed that Twell did not have any knowledge of any electoral fraud in the plebiscite.

## THE EVIDENCE OF WARWICK POWELL

This witness gave oral evidence on 22 and 23 November 2000. On 23 November 2000, after having earlier claimed privilege against self-incrimination and being directed to answer questions, Powell also admitted that he was involved in arranging false enrolments for the 1993 East Brisbane plebiscite. He stated that Bermingham asked him to provide some assistance with regards to securing votes for Twell. He said he spoke to a number of people who either moved physically into or falsely enrolled in the East Brisbane ward. He told me he could not remember every specific person to whom he spoke, but he would have asked people from the Griffith University Labor Club at the time, the main contact points being Grant Musgrove and his brother, Ashley, who he said were actively involved in running the Club. He stated that there was a general enthusiasm amongst the young people within the AWU faction in response to the heated factional friction of that environment (T1693). He admitted he filled out a false enrolment form for himself dated 6 June 1993 for the address 49 Heath Street, East Brisbane (Exhibit 209). He acknowledged he did not live at that address and said the enrolment was ‘a paper transfer’ and for the purpose of voting in the 1993 East Brisbane plebiscite (T1706). He said earlier, ‘I moved into the area on paper’ (T1694).

Powell stated that he subsequently completed an enrolment form dated 31 January 1994 moving himself on the electoral roll to his correct address at 271 Annerley Road, Annerley (Exhibit 208). This enrolment form showed his former address as 49 Heath Street, East Brisbane. According to Powell, the form was witnessed by Cameron Milner (the current State Secretary of the ALP), although the witness’s signature is illegible. I add that printing on Exhibit 208 beside the word ‘WITNESS’ says, ‘I am satisfied that all statements in it are true’. Counsel Assisting asked Powell whether Milner would have been aware of the false particular listing the former address and he replied:

I would say so but as I said to you a lot of people were involved in the [East] Brisbane plebiscite at the time so it was well known that there was a lot of movement into that area and subsequently from that area.

As this evidence shows, Powell’s response as to Milner’s supposed state of mind was far from a confident one. Milner may have been told by Powell that his former address shown on Exhibit 208 was 49 Heath Street, but the response by Powell does not clearly indicate that Milner knew that that address was a false one.

No attempts were made to interview Milner as it was considered that the investigation would not be advanced by doing so. After all, Milner was not a holder of an appointment in a unit of public administration and the enrolment form he was said to have witnessed was an enrolment for Powell’s *correct* address.

I add that Milner’s name was the subject of a non-publication order in line with my normal practice when this evidence was given by Powell. However, in light of the significant publicity subsequently given to testimony before the Joint Standing Committee on Electoral Matters (JSCEM), which disclosed evidence concerning Milner, I considered it appropriate to address the evidence in this report in an attempt to clarify any misconceptions that may have arisen from the JSCEM publicity.

## THE RESPONSES OF THE PERSONS IMPLICATED

### Michael Kaiser

Kaiser denied any involvement in moving people on the electoral roll for the purposes of the 1993 East Brisbane plebiscite. He said:

I was keen to see Robyn Twell win that plebiscite but I did not engage in electoral fraud. (T2393)

He told me that Jones came to him making complaints of people fraudulently enrolled, amongst other things, and naming Bermingham and Powell; that as a result he spoke to Bermingham who had denied the allegations against him; and that having spoken to Bermingham concerning them he did not speak to Powell about the allegations.

Kaiser acknowledged that Jones presented sufficient evidence to support the allegation that false enrolments had been made and he and Jones agreed to remove a large number of names from the plebiscite list — he said all names removed would have voted for Twell. Kaiser said that at the time Bermingham had suggested that the Left faction had been involved in the same conduct but he failed to produce any evidence of any such conduct.

## Grant Musgrove

Grant Musgrove gave evidence before me on 28 and 29 November 2000. At that time he was the State Member for Springwood and had been since 1998. He claimed privilege against self-incrimination and was then required to answer questions put to him. He stated that he was born on 28 March 1968, had been a member of the ALP since March 1992 and was a member of the AWU faction.

It was, Musgrove said, ‘entirely possible’ that he and his brother Ashley were asked by Powell to help move people ‘on paper’ into the East Brisbane ward. He conceded that he may have been involved in a false enrolment in his brother’s name (Ashley Musgrove) dated 21 June 1993 at an address of 316 Chatsworth Road, Coorparoo (Exhibit 249), and he conceded the witness’s signature on this exhibit was probably his own. Musgrove said that he could not recall anything further about the enrolment application and also conceded that he had probably witnessed an enrolment application form dated 7 June 1993 for Gary Allen at the address 16 Bell Street, Kangaroo Point (Exhibit 119). He said that he could not recall witnessing the form which, on the evidence, appears to have been a false enrolment.

A third false enrolment application dated 25 March 1992 in the name of Joseph Seconto Felice for 4/22 Caroline Street, Annerley (Exhibit 158), was acknowledged by Musgrove to have been witnessed by him. He said that the date of the enrolment ‘was almost to the day’ the day that he joined the ALP and ‘that’s probably an example of the first enrolment form that I signed as a member of the ALP’. He had no recollection of witnessing the form.

Each of these three false enrolments showed that the witness’s address — 12 Esma Street, Rochedale, which appears to have been Grant Musgrove’s correct residential address at the relevant times — was the address of his parents’ home.

At the completion of Counsel Assisting’s examination of Grant Musgrove concerning the 1993 plebiscite for East Brisbane and also for the state electorate of Springwood (to which I will return) the following questioning of Grant Musgrove took place on 29 November 2000 :

Mr Hanson:

Q. Mr Musgrove, do you agree it’s a fair comment to the effect that what you’ve told us today and yesterday, from what you’ve told us, it appears that you were prepared to engage in falsely enrolling people? You were prepared to do it?

A. Probably.

Q. Yes, but you can’t remember whether you did it or not?

A. Well, as I — I mean, I’ve signed — as I gave evidence before I’ve signed so many enrolment forms I couldn’t tell you the details of one of them.

Chairman:

Q. Whereabouts did you learn how to falsely enrol people?

A. Certainly there was a culture in the Party of those sort of things happening, yes.

Q. When did you first become aware of that culture being present in the Party?

A. Probably in the first two years in the Party at some point in time.

Q. Well, you’ve said you joined about March 1992?

A. Yes.

Q. So you learned in the first two or three years?

- A. Oh, yes.
- Q. And I think from what was said by Mr Hanson to you there are allegations made against you that you were asked to assist in the 1993 East Brisbane plebiscite; is that correct?
- A. That's the allegation as I understand it, yes.
- Q. Yes, and you don't recall whether you did assist; is that what you're telling us?
- A. That's what I'm telling you, yes.
- Q. Even though you've had some documents shown with your signatures on them?
- A. I mean I — I think on the balance of probability, you know, I did assist but I can't actually recall that occurring. (T2214)

Earlier Grant Musgrove had been asked by Counsel Assisting, 'Can you think of any other reasonable steps in logic that would indicate you've participated in falsely enrolling anybody else?' and he replied:

Well, other than, you know, the fact that, you know, people were, you know, threatened, cajoled etc. by Bermingham and Powell. (T2189)

### Ashley Musgrove

On the other hand, in evidence before me on 28 November 2000, Ashley Rohan Musgrove said that he recalled that he was requested by Powell and later Bermingham to move for the purposes of the plebiscite, but said he did not do so. He denied signing any enrolment application (especially Exhibit 249 for 316 Chatsworth Road Coorparoo) moving him on the electoral roll into the ward and he denied that he was one of the major contact points at the Griffith University Labor Club as suggested by Powell.

### Joseph Felice

Joseph Seconto Felice after claiming privilege and being directed to answer questions acknowledged in evidence before me on 27 October 2000 that he was a member of the AWU faction. He told me that an enrolment application dated 25 March 1992 in his name for 4/22 Caroline Street, Annerley (Exhibit 158), was in his handwriting. It is witnessed in the name of G Musgrove. He said he never lived at the address and acknowledged that the enrolment was for a political purpose, but in the witness box he could not recall what that purpose was. Felice said he would have been asked to fill the form out by Bermingham, Powell or possibly Grant Musgrove.

### POSSIBLE FORGED ENROLMENTS

There is evidence to suggest that false enrolments for addresses in East Brisbane ward relevant to the 1993 plebiscite were lodged with the Australian Electoral Commission in the names of:

- Kevin Allen Court (Exhibit 53)
- Andrew Francis Linden (Exhibit 116)
- Gary Allen (Exhibit 119)
- Shaun Albert Rohrlach (Exhibit 121)
- Michael Riley (Exhibit 105)
- Joseph Seconto Felice (Exhibit 158)
- Ashley Musgrove (Exhibit 249)
- Warwick Powell (Exhibit 209)

Apart from these names, there are two other names, which are subject to non-publication orders, that appear on Exhibits 220 and 223. The list prepared by Jones (part of Exhibit 184) in 1993 suggests that there may have been many more than those mentioned above. Jones in his evidence also suggested that there may have been more even names than those included on his list.



In relation to all of those already listed there can be no prosecution for false enrolments because any prosecution is, as has already been said, statute barred. In relation to the enrolments of Riley, Allen and Ashley Musgrove, there is some evidence that the enrolment applications may be forgeries and any prosecutions of forgery charges would not be statute barred.

I now deal with the enrolment applications for the three of the abovenamed, which may have been forged.

## **Michael Riley**

The enrolment application in the name of Michael Riley is dated 7 June 1993 and it seeks to enrol him at 452 Main Street, Kangaroo Point (Exhibit 105).

In evidence before me on 23 October 2000, Riley said that it was not his signature on the enrolment form; that he believed that none of the writing on the form was his; and that he could not recall authorising anybody to lodge an application in his name. Riley told me that, at that time, although he knew the occupants of 452 Main Street, Kangaroo Point, he never lived there.

Riley also said that he was aware there were a number of people in the Young Labor group who were enrolling people at the time in the East Brisbane ward. When asked whether he was one of them, he replied, 'Yes, I would say that I was one of them'. He acknowledged that he had found out in 1993 that his enrolment had been changed to 452 Main Street, Kangaroo Point, but did nothing about it. He told me that he did not now remember the circumstances in which he became aware of his enrolment at that address.

Shaun Albert Rohrlach in whose name Riley's enrolment form (Exhibit 105) is witnessed has no recollection of signing the form. One should add that apart from the signatures there appears to be at least three different handwritings on the enrolment application, which is a photocopy only.

On this evidence it is not possible to establish beyond reasonable doubt who signed the enrolment application. Furthermore, it is not possible to prove that Riley had not authorised someone to sign or submit the enrolment form on his behalf. I have already commented on the fact that none of the enrolment applications is an original — all are photocopies of microfiche — the quality of handwriting appearing on the photocopies is not very satisfactory for comparison purposes.

## **Gary Allen**

In the case of the enrolment application dated 7 June 1993 in the name of Gary Allen (Exhibit 119) for 16 Bell Street, Kangaroo Point, Allen in evidence before me on 27 November 2000 said that he was a member of the AWU faction but that his 'memories of that time are pretty unreliable'. He told me that he was 'pretty sure' the signature on the form was not his and that he was unable to recognise any of the writing on the form (the writing appears to be in three different handwritings). Allen further stated that he had no recollection of discussing the matter with Grant Musgrove, who appears to have witnessed the enrolment application. However, Allen said that he had a vague recollection that he had received a telephone call from Warwick Powell to let him know that 'he'd organised some sort of enrolment here'. His recollection is that this occurred after the event and that he expressed dissatisfaction and arranged for the enrolment to be corrected. He repeated 'it's only the vaguest of recollections and then other than that I've got no knowledge of this at all'. Grant Musgrove, who conceded that he appeared to have witnessed the enrolment form, could not further assist.

In these circumstances, in respect of the enrolment form in Allen's name (Exhibit 119), there is no prospect of a successful prosecution for forgery. It would not be possible to establish beyond a reasonable doubt that Allen had not authorised someone to sign the enrolment on his behalf or at least given the impression or led whoever signed it to believe that he was happy for it to be signed on his behalf. On Allen's account, it is

unlikely that Powell would subsequently have advised Allen of the false enrolment if Powell did not believe in the first instance that he had Allen's authority to enrol him at 16 Bell Street, Kangaroo Point.

### **Ashley Musgrove**

In relation to the enrolment application in the name of Ashley Musgrove (Exhibit 249), he stated that he did not sign the enrolment form and none of the writing on it was his. Furthermore, he said he knew nothing about it. Once again, Grant Musgrove, who conceded that it was his signature on the electoral enrolment application, could not assist. This enrolment application also appears to have at least three different handwritings on it.

Assuming Ashley Musgrove is correct when he says that he did not sign or authorise the signature on this enrolment form, there is insufficient evidence to establish who of the many people who appear to have handled the document in 1993 may have signed the signature. Little assistance is to be gained from a comparison of the handwriting because the original applications have been destroyed and only poor quality copies can be retrieved from microfiche. In any event, identifying the authors of the handwriting would not necessarily assist in identifying the person who signed the signature. It is most unlikely that any conclusion could be drawn from the limitations caused by the copy nature of the signature.

## **EVIDENCE OF THREATS TO, AND REWARDS FOR, COMPLIANT UNIVERSITY STUDENTS**

In the course of questioning those whose names appeared to be on false enrolment applications I heard evidence that in the early to mid 1990s young adults who were university students and sometimes members of Young Labor clubs were persuaded to perform illegal acts affecting the electoral roll. The evidence was that those acts were for the benefit of the ALP and particularly the AWU faction. There was also evidence that in return for such conduct rewards appeared to be offered to these compliant students, e.g. the student may obtain a paid position with a students' union organisation at the University or be promised and given a job in a Minister's office. I shall mention some of the evidence, most of which was given after the witnesses claimed privilege against self-incrimination and were directed to answer questions.

### **Shaun Albert Rohrlach**

Shaun Albert Rohrlach told me in evidence on 24 and 25 October 2000 that he was born on 12 January 1972 and had been a member of the AWU faction. He said he first joined the ALP in July 1990 and he ceased involvement in the faction in 1996 when he ended his employment with the government and went into private practice. He said the change of government [in 1996] brought about his change of employment and at the time he was employed as a research officer in the Premier's Department.

He told me that while a student at Griffith University he held the position of media officer on the Student Council being paid 'somewhere between ten thousand and fifteen thousand dollars for the year'. He said he was elected as media officer after having run on a team organised by the Labor Club. He said the funds were provided by the Student Council, which at that time (late 1990) was a union structure. He told me that while a media officer he received threats from Bermingham and Powell in the context of 'if you want to progress within the Party in terms of possible future employment or greater involvement' then he needed to be available to help with such things as letter boxing and door knocking. He added that this included moving into an electorate or ward to assist at a plebiscite (T1089/90).

In the witness box Rohrlach was confronted with quite a number of electoral enrolment applications in his name which appeared to be false, and frequently said he did not recall signing the documents. He said that although he could not recall signing them it may have occurred under the 'duress' and 'harassment' that was going on. He said Bermingham and Powell were the people who were engaged in falsely enrolling people for plebiscites.

On being presented with one enrolment form and being asked for an explanation and if the form bore his signature, his explanation was:

If I've done it, again as with other documents it would've been under coercion or under threats by them — threats were made by Lee Bermingham and Warwick Powell in terms of causing trouble with my employment. (T1100)

In relation to this issue I questioned Rohrlach:

Chairman:

- Q. Just going back to something you said quite a little while ago now, you said the East Brisbane plebiscite was, as I noted, the only one you remember threats in terms of your employment?
- A. that's because at that stage — sorry.
- Q. Now who were the threats made by and what was said to you?
- A. As I indicated it was basically, you know, you need to do this, you need to demonstrate your loyalty, something to that effect, otherwise, you know, we've — you know, we've supported you with getting employment, you know, you need to do the right thing and that to that effect.
- Q. But——?
- A. The exact language, I don't recall the exact language of what was said.
- Q. Well, what's the gist of what was said? You've said 'threats in terms of my employment'?
- A. Basically, you know, some — sorry.
- Q. Where were you working? Where were you working at that stage?
- A. At that stage I was — I think by that stage I was working in Wayne Goss's office.
- Q. All right. Well, what were you told in terms of your employment?
- A. That they would take steps to have me lose my job.
- Q. I see?
- A. Now at this stage we're talking about Lee Bermingham was party organiser. He was — would have been involved with meetings that dealt with, you know, senior staff within the Premier's office at that stage. It would have been — I guess would have been possible for him to do that sort of thing. (T1110)

He went on to say that when he got his employment within Wayne Goss's office, he dedicated himself to that job (T1107), that he was subjected to false rumours and that on one occasion Goss came to him and said comments had been passed about him and that he, Goss, had no intention of doing anything.

When given an opportunity to answer allegations made against him by Rohrlach in terms of causing trouble with Rohrlach's employment, Powell pleaded imperfect memory and denied having threatened Rohrlach or anyone else (T1728). Bermingham also denied threatening Rohrlach.

## Marc Anthony Zande

Marc Anthony Zande who gave evidence before me on 12 October 2000 said he was born on 4 July 1962. He attended Griffith University and told me he knew both Powell and Bermingham. He spoke of having been threatened once by Powell. He said he had attended a Labor Club meeting at which Powell was present. He told me that he had stood over Powell and done 'a lot of finger-pointing/gesturing and ... acted in a very bad manner, threatening manner or whatever.' He said that later that evening he went to Powell to apologise for his behaviour. He told me:

Mr Powell said he was going to have an assault charge brought against me unless I did a few things for him and the few things that he mentioned were that I would have to join his faction of the ALP and that I may be required at some stage to enrol somewhere where I don't live.

Zande mentioned other matters and then said Powell told him that if he were to do this, 'he would not press any charges'.

Powell denied Zande's allegations and countered with an allegation that Zande had physically assaulted him.

### **Rodney Geoffrey Kenneth Mugford**

Rodney Geoffrey Kenneth Mugford who gave evidence before me on 11 October 2000 said he had been a student at Griffith University and a member of Young Labor. When asked, 'Did Mr Powell or Mr Bermingham have anything to say to young students by way of promises?', he replied:

I can only speak from Mr Powell's position because I never had many detailed conversations with Mr Bermingham. It was always one or two sentences although I was certainly at many functions that Mr Bermingham was at and on letterboxing and things like that but it was a regular thing for there to be promises that you would be looked after in relation to jobs if you did what you were told and there was also often the statement that if you didn't do what you were told, that there would be repercussions. (T648/1)

He also said:

It was a regular thing for there to be promises that you would be looked after in relation to jobs if you did what you were told and there was also often the statement that if you didn't do what you were told, that there would be repercussions — these were statements from Warwick Powell. (T648)

Powell denied having made promises of jobs and denied having made threats.

### **Jamie Malcolm Lonsdale**

Jamie Malcolm Lonsdale gave evidence before me on 11 October 2000. He said that he had been a member of the ALP since 1992 and knew Felice and Powell. He told me that he was asked to enrol in an electorate (not East Brisbane) by Felice for the purposes of an ALP plebiscite which was being conducted. The following exchange took place between him and Counsel Assisting:

Q. What was your response?

A. At the time I felt that I was in no position to deny them doing that. I had a tenuous position coming up in the following year with my job which was involved in student politics and if I did not comply with their wishes, that that job could be in jeopardy.

Q. What made you think that?

A. From previous discussions and stories that had been told previously to me by Warwick Powell about how people were dealt with who crossed him.

Q. Who what? Crossed him?

A. Crossed him in the past or didn't comply with his wishes.

Chairman:

Q. What were you told?

A. That people — people would be not given or not be allowed to continue on with certain roles within politics or certain roles within student politics, that they would see to it that they would be denied those roles. (T705)

Counsel for Felice, Mr T Williamson, questioned Lonsdale concerning these threats:

Q. You've spoken here this afternoon about threats and things of that nature. You obviously were concerned at the time?

A. Yes.

Q. Had people threatened you?

A. Not directly, no.

- Q. You'd become aware of threats through other people?
- A. Yes. Threats in so far as what had happened to people throughout the course of previous years.
- Q. Now, evidence has been given here today, that's what's meant if I can use the phrase, destroying a person's political career in the ALP?
- A. Yes.
- Q. Destroying a person's advancement in the public service?
- A. Yes.
- Q. And in particular, say, Ministerial offices or anything of that nature?
- A. If — I suppose it could have meant that if that was the career path someone had chosen.
- Q. But that's what you meant by that, unless you did what you were told?
- A. Yes.
- Q. Your political ambitions or any other employment ambitions would suffer severely?
- A. Yes.
- Q. At the time what was your occupation?
- A. I was an office bearer at the QUT Student Guild. (T710)

Later, in examination by Mr Williamson, Lonsdale repeated that he had never been directly threatened by Felice or Powell.

## Kevin Allen Court

Kevin Court gave evidence on 11 October 2000 and told me that he was born on 26 September 1970. He said he was a member of the AWU faction having joined the ALP on 4 June 1991. Court said he knew both Powell and Bermingham before he joined the Party.

Court spoke of a social function he attended on a Friday night at the Ship Inn Hotel at South Bank in South Brisbane. He thought this was mid to late 1993 and that earlier in the same week Bermingham had spoken to him about a forthcoming plebiscite for the ward of East Brisbane where Twell, the AWU faction candidate, was running against Rea, the Socialist Left faction candidate. Court said Bermingham told him, 'You'll be enrolling in this electorate soon'.

According to Court, late on the following Friday evening at the Ship Inn social function, Powell and Bermingham approached him with a blank enrolment form and asked him to sign it saying that this was a sign of commitment to the faction — 'We need you to do it. Other people within the group have done it'. (T654/48)

Court went on to say that Powell did most of the speaking. He said:

What was said to me were things like, if you do not do this it will be difficult for you to have a future within the faction and the Party that everybody else within the group has you know — has been prepared to do this and if we lose the plebiscite you will be held responsible you know we'll consider you responsible because you haven't shown your commitment.

He went on to say:

As a result of that I then signed the form.

He described the form as blank and said Powell took it from him.

Court spoke of having second thoughts that night and next morning telephoned Powell intending to say he did not really want to go through with it. According to Court, Powell said:

It's obvious you've got jitters or second thoughts.

Court said he found that the enrolment form had been lodged with the Australian Electoral Commission. Later, after he found that he had in fact been enrolled at 205 Cornwall Street, Greenslopes (See Exhibit 53), he took steps to transfer his enrolment back to 41 Vine Street, Clayfield, the address at which he lived at all relevant times.

Powell in his evidence to the Inquiry said he did not recall any conversation as alleged by Court (T1690) and that he thought Court was mistaken in his evidence. Bermingham denied that any such conversation took place (T2531).

### **Grant Steven Musgrove**

I have already recorded that Grant Musgrove gave evidence that Bermingham and Powell ‘threatened and cajoled etc.’ people.

Grant Musgrove, said that in June 1993 he was working in the Premier’s Department, the then Premier being Wayne Goss. Felice gave evidence that either Bermingham or Powell or both of them had got Grant Musgrove ‘a job in the Premier’s Department or something at that stage’.

When Powell was asked to comment on this piece of Felice’s evidence he said, ‘Grant did work in the office of Cabinet but I didn’t get him the job’.

Powell was then asked, ‘Was it Lee Bermingham who got him the job?’ and he replied, ‘I have no idea’.

### **Lee Bermingham’s response to the employment claims**

When he gave in-camera evidence on 20 October 2000 Bermingham, when questioned by Counsel Assisting, provided the following evidence:

Q. Now, Mr Zande has given some evidence to similar effect as Mr Court, to the effect that he was led to believe by you and Powell that in order to get ahead in the ALP structure or to get a political job you would be well advised to be in with your particular group. You two were the political masters of the Labor students and if you messed with your crowd, you weren’t in with your crowd, you went against your crowd, you wouldn’t succeed within the ALP, you wouldn’t succeed with any political aspirations. What do you say about Mr Zande’s evidence?

A. I suppose that was perhaps a perception that existed with his faction, the Socialist Left, but it’s not a reality. I’ve — the — yes, I was — I sat on two selection panels when I was a — first of all a special policy adviser for the Minister for Business Industry and Regional Development, Geoff Smith, one, for the appointment of an assistant policy adviser. That selection panel was headed up by David Barbagallo and there were about three people on it and I was one of which, and it was conducted by the Premier’s Office. And there were a number of candidates for that job and one was selected.

Q. Would you yourself have much of a say by way of blackballing any particular applicant?

A. No, I didn’t look through the — I wasn’t — it wasn’t my job to do the short listing. It was — David Barbagallo headed up the selection panel. And on a second occasion I was on another selection panel. I think this time I worked for Jim Elder when he was the Minister for Business Industry and Regional Development and that was also for a policy adviser position and again it was headed up by David Barbagallo.

Q. Well, did you have any influence in procuring jobs for Young Labor people?

A. I helped two people get jobs when Jackie Byrnes came to me when she was Deputy Director-General in the Premier and Cabinet and said she had a couple of temporary positions coming up, could I suggest anybody. I did. I suggested Grant Musgrove and he got the position, I understand.

...

A. Just — oh, sorry, just back on employment, yes, I did assist other people to — I’d put in a word in for people occasionally. I did assist Peter Clark and Bevan Lisle both to get positions with their respective employers, Bevan Lisle with the attorney — I

think Dean Wells was the Attorney-General at the time — and I put in a word for him and he was successful in getting the position. Peter Clark, who had recently become unemployed, who now holds the position with the current Attorney-General, I put in a word for him to get a position in Matt Foley's office at the time and he was successful. But I see nothing inappropriate with those things. Putting in a word for somebody in terms of employment I think is fine. But to suggest out of that there was a network and that, you know, you had to, you know, do as I say to get a job is ridiculous.

Bermingham was further questioned by Counsel Assisting at the public hearing on 4 December 2000 about the possibility of obtaining jobs for people:

- Q. ... what's your comment firstly on the suggestion that you and Powell wielded a lot of influence over Young Labor people?
- A. I suppose that I did have some influence but I don't think it was a question of the lure of jobs although I have no doubt that many of the Young Labor people who were involved in the AWU were very keen and perhaps some of their motivations for doing things was in terms of getting jobs but indeed I never discussed the question of jobs with anybody. I did play a role in a number of — a couple of selection panels, not headed by myself and they were for staff in the office that I worked in and that's in——
- Q. That's the ministerial office?
- A. Ministerial office. They were headed up by David Barbagallo and not myself. I was simply one person on the panel.
- Q. But you were in a position to recommend young people for a job, weren't you, in a ministerial office?
- A. I did recommend a couple of people for jobs but I don't think they were — the ones that I remember recommending weren't young people anyway, they were Peter Clark for a position at the Attorney-General's office, and I remember recommending Bevan Lyle for a position in the same office.
- Q. And——?
- A. Neither of them being young people.
- Q. Was Grant Musgrove assisted in——?
- A. Grant Musgrove was——
- Q. ——obtaining a ministerial position?
- A. I don't know about a ministerial position but I do believe that he was given a position by Jackie Byrnes in the Department of Premier and Cabinet.
- Q. And you or Powell have any influence on that appointment?
- A. Well, not really, it was Jackie Byrnes was the Deputy Director-General.
- Q. Were you and Powell in a position to speak favourably of people when a vacancy came up?
- A. Sure, yeah.
- Q. Were you——?
- A. In some positions, yes.
- Q. And did you make that known amongst the Young Labor people?
- A. No.
- Q. Mmm?
- A. No, I didn't make it known. As I said before I didn't go talking about it. I knew that some people had — you know, I knew some people probably had expectations of getting jobs but it was for that very reason I didn't talk about it because I didn't want people's expectations raised, that, you know, the work that they do here would equate to some sort of position. (T2534/5)

During questioning by Mr Mulholland, the following exchange took place:

- Q. Mr Powell paints a picture for us of a group of enthusiastic young people who — these may not have been his words but it was to this effect, of almost falling over

themselves to want to participate in these fraudulent enrolments. Do you remember that passage of evidence where he says how enthusiastic they were? And you've used similar language?

- A. Jumping out of their skins, that's what he says.
- Q. Jumping out of their skins, exactly, thank you. Is that the way you would describe these young people?
- A. I think many of these young people were quite ambitious, were quite keen to end up in either political office or Ministerial positions and so on, and I think that they were very keen to help, and indeed they did help, and so it's my belief that yes, that is correct, they did. They were very keen to be of assistance.
- Q. If they were very keen to be of assistance, hoping for some advancement within the Party, they would be extremely susceptible to a person such as you, I suggest, Mr Bermingham, who wanted to exert your power and influence over them?
- A. Question?
- Q. Yes, that's a suggestion?
- A. What's—
- Q. They were very vulnerable young people in your hands at that time in the 1990s when you associated with them. Do you agree with that or not?
- A. No, I don't — well, I don't personally know their psychological histories but I do believe that they were very anxious, they were very keen. I think that they were all fairly intelligent, they were university students, they weren't without some sense of making decisions in terms of their own interests and their own future, and no, I reject the idea that I, in any way, played on their ambitious nature and therefore got them to perform things that they wouldn't have otherwise performed. (T2674/5)

Some time later, during questioning by Mr Mulholland, I asked him certain questions:

- Q. A little while ago you said, speaking of these Young Labor people, they'd be keen to finish up working in Ministerial offices. Now, it's said they got that idea from what you told them. Did you promise them jobs in Ministerial offices?
- A. No, and I've been careful to say, Mr Commissioner, that I was — I know that, you know, some people believed through their work that they would be rewarded through positions. I was always very careful not to raise expectations. In fact I was not in a position to give these people positions.
- Q. I'm not saying you promised them jobs there but you—?
- A. Yeah.
- Q. —built up their hopes of getting a job?
- A. No, I—
- Q. You didn't?
- A. Quite — quite the opposite.
- Q. I see?
- A. I was keen to make sure that people didn't believe that somehow this sort of work would lead to jobs. You know, I know that some people may have believed that but in fact that wasn't the case and I didn't encourage that belief.

Bermingham told me (T2656) he knew nothing about pressure being exerted by Powell on students or Young Labor Party members. He acknowledged that he had some capacity to influence the final choice of persons being employed in a government position and arguably to reward a compliant student. Certainly there would have been the perception that he could influence selections. In fact he did sit on some selection panels.

There is no suggestion that any appointments Bermingham may have influenced were anything other than temporary. There is no suggestion that he may have influenced permanent appointments to the public service. There is also no evidence that the Ministers or senior officers in whose offices these temporary appointments were made were aware of the nature of any prior association between the appointees and Bermingham.



Whether or not Bermingham and Powell caused students to engage in illegal activity as claimed by the students, it appears that if they did do so neither of them gave any consideration as to how the student's illegal conduct might have adversely affected his or her career. Many students aspire to later entering a profession. In a number of professions, persons seeking admission are required to be of good fame and character and once admitted are required to maintain that status. If by their conduct they do not show good fame and character or fail to maintain their status they may be refused admission or (if already admitted) lose their right to remain members of the profession (e.g. in the case of barristers see *In re John Cameron Foster (1950)* 67 WN NSW 122 and especially the words of Chief Justice Street at page 124, which are as important today as they were then).

It is not too much to say that students choosing to engage in unlawful conduct run the risk that, if their unlawful conduct is discovered, they will be prosecuted and a conviction may be recorded so that their reputation is permanently damaged — one consequence can be loss of ability to enter or continue in a chosen profession.

While it is the hope that all members of society will be law abiding, students who may be encouraged and induced by promises of reward to commit illegal acts affecting elections and internal party plebiscites should be made aware of the risks they run — risks which can ruin their lives in a chosen career.

## CONCLUSION

The evidence before the Inquiry concerning this plebiscite is capable of suggesting that a number of consensual false enrolments were made by various persons. However, for the reasons I have already given relating to the expiration of the time limitation for prosecuting persons who may have committed any offences relating to consensual false enrolment, I have decided that any such matter should not be referred to the Commonwealth Director of Public Prosecutions.

Furthermore, in the case of the three enrolments in relation to which forgery may have occurred, the evidence is such that in my view it would not be possible to prove beyond reasonable doubt either that it was carried out without the consent of the applicant for enrolment or that any particular person committed the forgery.

In relation to the evidence concerning threats, in my view, such evidence is too general to be the basis of any criminal charges against Powell or Bermingham.

There was also evidence which suggested the provision of rewards for occasional illegal conduct intended to benefit the ALP. Whether or not Bermingham and Powell had offered or granted rewards, the evidence clearly suggested that this was the perception held by many young Party supporters who saw Bermingham and Powell as being in positions to influence appointments.

## THE 1993 PLEBISCITE FOR THE BRISBANE CITY COUNCIL WARD OF MORNINGSIDE

The term of reference relevant to this chapter is:

1. To conduct an investigation into any alleged official misconduct by way of conduct which constitutes or could constitute a criminal offence or offences:  
...  
(d) affecting the electoral roll relevant to the conduct in 1993 of a plebiscite within the Australian Labor party to select its candidate for the Brisbane City Council ward of Morningside;  
...

### BACKGROUND

As indicated in the previous chapter, the CJC was sent an anonymous document purporting to be an internal discussion paper prepared in 1994 by the Social Left faction of the ALP, which discussed the plebiscites for the Brisbane City Council wards of Morningside and East Brisbane that occurred in 1993. I have set out extracts of that document in the previous chapter, but for present purposes suffice to say that the document mentioned the ALP Disputes Tribunal in relation to the preselection for East Brisbane and Morningside. The document suggested that certain incidents had come to light in those disputes, including 'false address enrolments'. That document is Exhibit 178.

The preselection for Morningside involved a contest between Sharon Linda Humphreys and Linda Elizabeth Holliday. At 4 p.m. on 13 August 1993 the nominated preselection ballots for Morningside closed. On 15 August 1993 the Electoral College met and Humphreys was declared the winner.

By letter dated 25 August 1993 Holliday lodged a dispute with the Disputes Tribunal in relation to the conduct of the preselection (Exhibit 179). The grounds stated in Exhibit 179 do not mention 'false address enrolments'.

Holliday and Humphreys gave evidence before me on 20 November 2000. Humphreys stated in evidence that she was a member of the Labor Unity faction and Holliday said she was a member of the Socialist Left faction.

Humphreys was subsequently elected to the council on 26 March 1994 and she is still the councillor for the ward of Morningside.

### THE INVESTIGATION

The CJC obtained from the ALP through its solicitors copies of documentation in relation to that dispute. A review of that documentation, including Exhibit 179, indicated that there was no suggestion that there had been any electoral fraud raised by either candidate.

Holliday confirmed in evidence that the dispute did not involve any suggestion of electoral fraud, but related to internal Labor politics. She was asked whether she had ever become aware of any evidence of electoral fraud in Morningside, to which she responded that she had not. Humphreys also confirmed that the dispute did not involve any question of electoral fraud. She stated that she had no evidence of any electoral fraud in the plebiscite.

## CONCLUSION

Although there is significant evidence that false electoral enrolments were made in relation to the East Brisbane plebiscite in 1993, there is no evidence to suggest similar conduct in relation to the Morningside plebiscite. It would seem that comments made in Exhibit 178 concerning 'false electoral enrolments' were references only to events concerning the East Brisbane plebiscite.

## THE 1986 PLEBISCITE FOR THE STATE ELECTORATE OF SOUTH BRISBANE

The term of reference relevant to this chapter is:

- (1) to conduct an investigation into any alleged official misconduct, by way of conduct which constitutes or could constitute a criminal offence or offences;
- (e) ... affecting the electoral roll relevant to the conduct in 1986 of a plebiscite within the Australian Labor Party to select its candidate for the state electorate of South Brisbane.

### BACKGROUND

The Inquiry's original terms of reference were further extended when information was received that a number of electoral enrolments for the 1986 plebiscite in South Brisbane were false. An initial assessment of this information, including sighting photocopies of relevant enrolment forms, raised the possibility that one or more of these enrolment forms had been forged.

Two of the enrolments related to two persons who at the time when the terms of reference were extended were Members of the Legislative Assembly, namely, Michael Hans Kaiser and Paul Thomas Lucas. The latter is still a Member. The person who is said to have benefited from the false electoral enrolments in 1986, namely, Demetrios ('Jim') Fouras, was also a Member of the Legislative Assembly at the time when the terms of reference were extended and he still is a Member. It is not in issue that the candidates for the plebiscite were Fouras and Anne Marie Warner. Both Warner and Fouras gave evidence before me on 12 January 2001.

Warner stated that she was a member of the Socialist Left faction, whilst Fouras stated that he was not factionally aligned.

Warner stated that she had no recollection of any branch stacking during the plebiscite.

Fouras stated that he took no objection to anyone on the plebiscite list. He stated that he was assisted by the then secretary of the East Brisbane branch of the ALP, David Peter Barbagallo, who told him that he would get as many as he could of the East Brisbane branch people to vote — presumably for Fouras. Fouras stated that he understood that Barbagallo had a dislike of the Left faction. Fouras stated that until he read the newspapers in the course of my Inquiry he knew nothing concerning any allegations of impropriety by Barbagallo in the plebiscite.

There is no evidence that Warner or Fouras were involved in any impropriety in the plebiscite.

### EVIDENCE OF BOASTING OF BRANCH STACKING

In evidence before me earlier in the hearings, Lee Bermingham and Warwick Powell said that Kaiser had in the past boasted of having a large number of people enrolled at his premises in 1986 for the plebiscite between Fouras and Warner. According to Bermingham and Powell, Kaiser told them that Warner had come around and confronted him and insisted he take them off, which he did. I should add that when Bermingham first gave evidence in the in-camera hearing, he made no mention of

having heard Kaiser say so himself and the allegation related to a plebiscite between two other persons in 1984. Kaiser before me denied any such conversation.

Warner stated that she had no recollection of ever confronting Kaiser, or anyone else, although she acknowledged that she may have taken objection to some of the names on the plebiscite list on the basis that they did not live in the electorate. She said that Kaiser was a 'very young man' at the time and she did not know him well. The transcript records she then said:

I don't think it would be very plausible for me to confront Mike Kaiser.

Bearing upon the evidence that Kaiser had boasted in the past was the evidence of Jenny Carmel Fox, who appeared before me on 11 January 2001. She stated that she was a member of the University of Queensland Union ALP Club and had attended one conference of Young Labor in the early 1980s. She apparently witnessed an electoral enrolment form moving Craig Geoffrey Arnott to 20 Princess Street, Fairfield (Exhibit 376). When interviewed by an officer of the CJC Arnott stated that he never resided at 20 Princess Street, Fairfield. He said that he had no recollection of the enrolment, but acknowledged the writing and signature on it looked like his. The enrolment application is dated 22 January 1985, but seems to have been signed on 22 January 1986. Fox told me that she had no recollection of witnessing the enrolment.

A further enrolment form moving Arnott from 20 Princess Street was also witnessed in the name of Fox. This is dated 4 September 1996 (Exhibit 377). Fox had no recollection of this enrolment form either, although she did not dispute it was her signature.

Prior to Fox giving evidence before me on 11 January 2001 she was interviewed by an officer of the CJC on 5 January 2001 over the telephone. At that time she told the officer that there had been a fair amount of bragging about the number of people who were living at particular addresses. She nominated the bragging having come from Kaiser and also possibly Barbagallo, although she could not recall any specific incidents or plebiscites. She also told the officer that there was, on the part of Kaiser and perhaps Barbagallo, a general pride in the number of people that could be moved from branch to branch or from electorate to electorate. She explained that they were not openly bragging about illegal activities. She told the officer that she was 'quite shocked' at the fact that Kaiser and Barbagallo took these issues quite lightly.

When Fox gave evidence before me she significantly qualified what she had said at interview. She told me that she had no idea whether the statements were made around the time of the 1986 South Brisbane plebiscite. She also stated that the words 'bragging' or 'boasting' may not have been particularly apt. She said in the case of Kaiser particularly she would be loath to use the word 'boast' because Kaiser had always spoken in a fairly moderate and matter of fact way.

Fox stated that at the time she was first contacted by the officer of the CJC on 5 January 2000 it was four o'clock in the afternoon on the last day of a two-week holiday in the Barossa Valley and she had had several glasses of wine (T2997–3002).

## CONSENSUAL FALSE ENROLMENTS

On 10 and 11 December 2001, Barbagallo gave sworn evidence to the Inquiry, although for almost all of his evidence he had objected to answering questions on the grounds that to do so would tend to incriminate him. Despite his objections, he was required to answer questions and pursuant to section 96 of the CJ Act statements thereafter made by him are not admissible in evidence against him in any criminal proceedings that may be brought against him.

Barbagallo admitted that he organised a scheme to enrol people in the South Brisbane electorate for the purposes of the 1986 plebiscite then pending in that seat. He admitted that as part of his scheme, some persons, with their knowledge and consent, were falsely enrolled at an address in the South Brisbane electorate — an address at which they were not living (T2975) (see also T2977 and 2980).

Barbagallo, before entering the witness box, had declined to be interviewed by any person on behalf of the CJC. From the witness box he admitted participating in having falsely enrolled in the South Brisbane electorate the following persons: Anthony Wesley Kynaston, Philip Morrison Brown, Olaf Martin Heeremans, Michael Hans Kaiser, James Bernard Boccabella, John Clifford Cherry and Matthew James Crowley. Matthew Crowley's electoral enrolment form had been witnessed by Barbagallo and because Crowley's enrolment form was processed by the Electoral Office at the same time as an electoral enrolment for Anne Patricia Jones — at an address that was false — there is reason to suspect that Barbagallo had a hand in falsely enrolling Jones. Barbagallo testified that he had no recollection of the Arnott enrolment at 20 Princess Street, Fairfield. He acknowledged that Arnott was a friend of his.

There is one point of distinction between the South Brisbane 1986 plebiscite and other plebiscites with which this Inquiry has been concerned. That is, that in early 1986 Queensland and the Commonwealth kept separate electorate rolls. The electoral enrolment forms with which the Inquiry was concerned in the 1986 plebiscite were for enrolments on the Queensland Electoral Roll only. Examples of the separate forms appear in Exhibits 375 and 376, both of which are for the same person claiming to be entitled to enrol at the same address — Exhibit 375 is the State form and Exhibit 376 is the Commonwealth form. It is true to say that later in 1986 and after each of the above false enrolments a single enrolment form for use on both Commonwealth and Queensland rolls came into being.

As the 1986 plebiscite involved the Queensland Electoral Roll only, any conduct affecting the roll is governed by Queensland statute.

In 1986, the *Elections Act 1983–1985* of the State of Queensland was in force. In 1986 section 117 of that Act which then applied read:

- 117 Obstruction or wilful misleading of principal electoral officer etc. Any person who —
- (a) obstructs or wilfully misleads the principal electoral officer in the exercise or performance of his powers or duties;
  - (b) wilfully misleads any electoral registrar in the preparation of any roll; or
  - (c) wilfully inserts or causes to be inserted in any roll any false or fictitious name or address is guilty of an offence.

Penalty: \$200 or imprisonment for three months.

By section 126 of the *Elections Act 1983–1985*:

Offences against this Act may be prosecuted in a summary way under the *Justices Act 1886–1980*.

In 1986 summary prosecutions under the *Justices Act 1886–1985* were required to be commenced within one year from the time when the matter of complaint arose (section 52 *Justices Act 1886–1985*).

Any proceedings against Barbagallo, or any other person, for any breach in 1986 of section 117 of the *Elections Act 1983–1985* are therefore now statute barred.

Apart from a breach of section 117 of the *Elections Act 1983–1985*, is there any other provision under any other Queensland statute which has application?

In the Criminal Code of Queensland Chapter XIV (subsequently renumbered 14), one finds in a coincidentally numbered section 117 the only other provision that may have application other than those that relate to criminal conspiracy to which I will return shortly. It currently provides:

**False claims**

- (117)(1) Any person who —
- (a) makes in a claim to be inserted in a list of electors any statement which is, to the person's knowledge, false in any material particular; or
  - (b) makes, orally or in writing to a court or tribunal having jurisdiction to deal

with the claims of persons to be registered as electors or as persons claiming to be electors, a statement relating to the qualification of any person as an elector which is, to the person's knowledge, false in any material particular;

is guilty of a crime and is liable to imprisonment for seven years.

- (2) the offender cannot be arrested without warrant;
- (3) a person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

There is no time limitation in relation to such an offence.

Section 117 as in force in January 1986 is effectively identical, the only difference being that then, instead of the words 'the person's knowledge' in subsections (1)(a) and (b), the words 'his knowledge' appeared.

Section 117, as I have said, appears in and is, in fact, the last section in Chapter XIV, headed 'Corrupt and Improper Practices at Elections'. Chapter XIV contains subsection 98 to 117 (both inclusive).

A question arises — does the insertion in 1986 of false particulars in an application by a person to enrol on the electoral rolls, with the intention of using the falsely enrolled person's vote at an ALP plebiscite, also constitute an offence under section 117 of the Criminal Code of Queensland, for which there is no time limitation? If not, then, with the exception of provisions relating to criminal conspiracy charges, no other provision is available. The answer to this question depends, in part, on the interpretation of Chapter XIV of the Criminal Code of Queensland, and particularly the definition of 'election' in section 98 and, in part, on the effect of section 98A, which was inserted into Chapter XIV in 1993. Although section 98A was inserted long after the events of 1986, by virtue of section 11 of the Criminal Code of Queensland, consideration must be given to any changes in the law since the date of any offence. Section 98A reads:

98A This Chapter does not apply to an election for the Legislative Assembly or a Local Government.

Section 98 in Chapter XIV defines 'election' as follows:

'Election' includes any election held under the authority of any statute providing for the choice of persons to fill any office or place of a public character and any referendum conducted under the Referendums Act 1997.

The word 'election' wherever it appears in the heading of Chapter XIV must be construed accordingly.

The word 'elector' is also defined in section 98 as:

includes any person entitled to vote at an election.

In section 117, the words 'list of electors' appear and in my view that phrase means list of persons entitled to vote at an election falling within the definition of 'election' in section 98. Although the definitions of 'election' and 'elector' each contain the word 'includes', it is my opinion that despite the presence of 'includes', a word of wide import, neither of these words should be read or construed as meaning or referring to an ALP plebiscite conducted in accordance with rules of the Australian Labor Party (Queensland Branch). In my view, the references in the definition of 'election' to the 'authority of any statute providing for the choice of persons to fill any office of a public character' and the *Referendums Act 1997* make plain the legislature's intention that, leaving the Referendums Act aside, 'election' in Chapter XIV must mean an election held under the authority of a statute providing for the choice of persons to fill any office of a public character — subject of course to the operation of section 98A.

I consider that 'elector' takes its meaning from the definition of 'election' and, on its face, given in the definition of 'election', the use of the words 'authority of a statute providing for the choice of persons to fill any office of a public character' and '*Referendums Act 1997*', an ALP plebiscite, which is essentially a domestic matter conducted in accordance with the ALP Party Rules, cannot be counted or construed

as an election within the meaning of ‘election’ defined in section 98 — nor can ‘list of electors’ in section 117 be construed to mean list of electors taken from ALP records. The evidence showed the electors entitled to vote at the plebiscite were persons whose names appeared on ALP records — it was purely compliance with ALP rules that persons eligible to vote at the plebiscite were required to be on the electoral rolls kept pursuant to a statute. This latter requirement cannot convert a plebiscite conducted under ALP rules into an ‘election’ within Chapter XIV.

It cannot be said that such an ALP plebiscite is conducted under the authority of a statute providing for the choice of a person to fill an office of a public character. There is no doubt that a Member of the Legislative Assembly fills an office of public character but the plebiscite was not to choose a person to hold such office — the plebiscite was a preliminary step — choosing the person to represent the ALP in the hope that this person would eventually become the Member of the Legislative Assembly.

I return to section 98A, the effect of which is that Chapter XIV does not apply to an election for the Legislative Assembly or a local government, although each such election is held under the authority of a statute providing for the choice of persons to fill an office of a public character.

Applying section 98A and exempting those types of elections from the effects of Chapter XIV, it is unnecessary to ask to what other ‘elections’ within the definition of ‘election’ in section 99 does section 117 of the Criminal Code of Queensland apply. The question always has been, ‘Was there evidence sufficient to justify referring material to the Queensland Director of Public Prosecutions for her to decide whether or not to charge Barbagallo with an offence under section 117?’.

By way of comment, one interesting side effect of section 98A is that the provisions of Chapter XIV of the Criminal Code of Queensland do not apply to elections for the Legislative Assembly and Local Government, but will apply to any other elections falling within the definition of ‘election’ in section 99. This is a matter on which I shall later comment.

I have concluded that any actions Barbagallo may have taken that affected the electoral roll kept under the *Electoral Act 1983–1985* did not breach section 117 of the Criminal Code of Queensland. I shall not recommend referring the matter to the Queensland Director of Public Prosecutions for her to consider a prosecution of Barbagallo under section 117 of the Criminal Code of Queensland.

## FORGERY

In considering this aspect, I exclude Barbagallo’s evidence given to the Inquiry on 10 and 11 January 2001. I do so because Barbagallo, despite his claim of privilege based on the ground that to answer questions would tend to incriminate him, was required to answer questions put to him — the provisions of section 95 and section 96 of the Criminal Justice Act applied. The result was that what Barbagallo said from the witness box is not admissible in evidence against him in criminal proceedings. Consequently, any admissions to the Inquiry made by him after claim of privilege and being required to answer cannot be used in criminal proceedings against him. Thus, in deciding whether or not to refer to the Queensland Director of Public Prosecutions any charge of forgery by Barbagallo of any of the early 1986 enrolment application forms, I must first be satisfied that there is admissible and credible evidence capable of proving forgery in respect of one or more of the enrolment applications.

Counsel Assisting the Inquiry have submitted that there is such evidence and they point to the following:

1. Evidence of John Heath, a document examiner of Document Consultancies contained in his report dated 2 January 2001 (Exhibit 400). He opined that:
  - (a) the upper-case printing and figures present on Documents ‘Q1’, ‘Q2’, ‘Q4’, ‘Q5’ and ‘Q6’ have been completed by the one writer. Excluded are all entries contained within the ‘Oath’ section of each document present at the bottom of each document and commencing ‘I am qualified’;



- (b) the entries 'South Brisbane' present on Documents 'Q1', 'Q2', 'Q5' and 'Q6' have been completed by the one writer. It is not possible to satisfactorily compare these entries with other identified entries due to the predominantly lower-case nature of the entries. The copy nature of entries examined, in this instance, has not prevented an opinion as to authorship being expressed.

I note that:

- Document 'Q1' to Heath's Report is a photocopy enrolment application dated 7 January 1986 in the name of Michael Hans Kaiser for an address at 11 Seventh Avenue, Coorparoo.
- Document 'Q2' to Heath's Report is a photocopy enrolment application dated 8 January 1986 in the name of Anthony Wesley Kynaston for an address at 37 Drury Street, Hill End.
- Document 'Q4' to Heath's Report is a photocopy enrolment application dated 10 January 1986 in the name of James Bernard Boccabella for an address at 823 Main Street, Kangaroo Point.
- Document 'Q5' is a photocopy enrolment application dated 7 January 1986 in the name of Olaf Martin Heeremans for an address at 11 Seventh Avenue, Coorparoo.
- Document 'Q6' is a photocopy enrolment application dated 8 January 1986 in the name of Phillip [*sic*] Morrison Brown for an address at 11 Seventh Avenue, Coorparoo.

Heath's report further said:

Conclusions (a) and (b) are expressed as **definitive opinions**. This is the highest level of opinion given by document examiners in the examination of handwriting.

2. Evidence of Kynaston contained in a tape-recorded interview which a CJC officer had with him on 3 January, 2001 in which Kynaston, when speaking of the document 'Q2' said that he spent a fair bit of time on boards with Barbagallo, that the 'W' in the word 'Wesley' in Q2, is characteristic of the way Barbagallo wrote the letter 'W' and that the rest of the form is as he remembers Barbagallo's writing to be (see Exhibit 396). Document 'Q2' is the same as Exhibit 371.
3. Evidence of Boccabella in the following extracts from his oral evidence to this Inquiry (T3014–3015):
  - Q. Now, Mr Boccabella, you say that you went or it came to your notice that you were wrongly enrolled?
  - A. Yeah.
  - Q. So apart from correcting it with the electoral office did you do something about it?
  - A. In terms of what?
  - Q. Well, did you speak to anybody about it?
  - A. I had a chat to David about it.
  - Q. Why did you turn to David Barbagallo about it?
  - A. Well, he's the only person I've had any discussions about anything electoral
  - Q. And what did you say to him?
  - A. I don't exactly remember exactly what I said but whatever his reply was placated me and I thought, okay, mistake, move on.'

Question by Chairman:

Why didn't you go to the Australian Electoral Commission and you seem to recall that you may well have got a letter or someone called telling you were wrongly enrolled. Wouldn't that be the place to go to see the ... ?

- A. Well my understanding — my information came from the Electoral Commission.

- Q. Yes, but then you've told Mr Hanson you went and saw Boccabella [sic] after you've been told you're wrongly enrolled?
- A. As I said the only person that had anything to do with electoral rolls was David.
- Q. Well why would you think that he had anything to do with the enrolment at 823 Main Street?
- A. Because he was the only person I'd done anything electoral with. That's the only reason.
4. Evidence of Boccabella contained in a tape-recorded interview which a CJC officer had with him on 21 November 2000 when, speaking in respect of the enrolment form, Document 'Q4' above (which is also the same as Exhibit 372), he said he knew the handwriting on the form to be Barbagallo's and that he knows the signature of the witness to be Barbagallo's. In the same interview Boccabella said, when speaking of another enrolment form (Exhibit 378) in his name and dated 8 May 1985 for enrolment at an address at 140 Victoria Street, Morningside, that the writing on that form with the exception of the signature was Barbagallo's.

In respect of any charge of forgery there would almost certainly be a dispute as to whether or not the Crown has proved beyond reasonable doubt that Barbagallo was the person who forged the particular enrolment application form.

Section 59 of the *Evidence Act 1977* will apply and it will be necessary for the Crown to satisfy the trial judge of the existence of writings by Barbagallo and that those writings were genuine writings of Barbagallo. If the Crown succeeds in doing this — and the above evidence to which I have referred is relevant to this issue — then the jury as tribunal of fact may compare the disputed writings with those portions of the above evidence which they are satisfied contain genuine writings of Barbagallo (see section 59(2) of the Evidence Act).

I refer now to the various enrolment forms in evidence at the Inquiry, one or more of which may be the subject of a recommendation concerning a forgery charge:

- (1) Exhibit 365 and document 'Q1' referred to in Heath's Report — in the name of Michael Hans Kaiser — are the same. There is evidence that Kaiser signed this form — consequently it will not be the subject of any recommendation concerning a forgery charge. I will return to this form when I consider the involvement of Kaiser.
- (2) Boccabella's enrolment form (Exhibit 372), which is the same as 'Q4'. Boccabella's evidence to the Inquiry was not conclusive. He provided specimens of his signatures (Exhibits 379 and 380). The signature on Exhibit 372 appears to me to bear a strong resemblance to Boccabella's specimen signatures — I say this despite the passage of some 15 years. Further, the effect of Boccabella's evidence by the time he left the witness box was that he may have signed the form. Mr Hanson does not suggest that Barbagallo signed Exhibit 372 other than as witness. In light of Boccabella's evidence it will be very difficult to prove beyond reasonable doubt that Barbagallo signed Boccabella's name as claimant on Exhibit 372 other than as witness. Consequently, it will not be the subject of any recommendation concerning a forgery charge.
- (3) John Clifford Cherry — enrolment application for an address at 20 Princess Street, Fairfield, which appears to bear Barbagallo's signature as witness (Exhibit 374). Cherry claimed privilege when questioned about Exhibit 374. This was noted and he was required to answer all questions. In his sworn evidence given on 11 January 2001 he told me that he had seen Exhibit 374 for the first time that morning. He told me that his honest belief was that the signature on Exhibit 374 (as claimant) was not his (T3080/44). In evidence he pointed to what he said was a mistake in the enrolment form in that the name of the town in which the form says he was born is incorrect and that he would not have signed a form with a mistake in it. Cherry also said, 'I have no recollection at all of authorising Barbagallo to sign a form on my behalf, none whatsoever.' (T3083/32). Despite this statement, and it was not a surprising statement given the passage of time

since early 1986, the general thrust of the evidence of Cherry, who in 1986 was a law student, was that when first approached by Barbagallo, Barbagallo asked him was he prepared to move physically to a particular address in South Brisbane or allow himself to be moved notionally, and he intimated to Barbagallo he would be prepared to do that.

I agree with Mr Hanson's submission that in those circumstances if Barbagallo were charged with having forged Cherry's signature on, or otherwise knowingly inserted false information into, Exhibit 374, (assuming the Crown could prove that Barbagallo was the author), Barbagallo would almost certainly have a good defence under section 24 of the Criminal Code of Queensland on the basis that Cherry's agreement with Barbagallo's request that he falsely enrol in the electorate could well have led Barbagallo to honestly and reasonably believe that he had Cherry's authority to fill in and sign a form to achieve that result. At a trial, if the Crown hoped to obtain a conviction, the Crown must disprove beyond reasonable doubt the existence of such a belief, and on Cherry's evidence the Crown would have no chance of success of a forgery charge in respect of Exhibit 374. It is pointless to refer to the Queensland Director of Public Prosecutions consideration of a charge of forgery in respect of Exhibit 374.

- (4) I come now to the enrolment application form in the name of Phillip [sic] Morrison Brown (Exhibit 369), which is also 'Q6' in Heath's Report. Brown's evidence to this Inquiry was that none of the writing on Exhibit 369 (including the signature) is his, that he knows nothing about filling out the form and that he did not ever say anything to Barbagallo which might have led Barbagallo to believe that he had Brown's authority to fill out and lodge the form, (Exhibit 369) (see T3025). Brown, I might add, swore that he did not ever live at 11 Seventh Avenue, Coorparoo, that in January of 1986 he was in Stanthorpe with his parents and around about the middle of January was preparing to get some accommodation in Toowoomba so that he could do a course in Toowoomba. He told me he did know Barbagallo — 'not particularly well, he was well known on the campus' of the University of Queensland. Brown had been a member of the University of Queensland Labor Club between around 1983 'to when I finished in 1985'.
- (5) I turn now to the enrolment application form in the name of Olaf Martin Heeremans (Exhibit 370). This exhibit is the enrolment application dated 7 January 1986 name for 11 Seventh Avenue, Coorparoo. His evidence in summary was that he does not believe the signature on that form to be his, that he has no recollection of the form whatsoever, that he has no recollection of discussing with Barbagallo being enrolled at the Coorparoo address and that it is not the sort of thing to which he would have agreed (T3067–3069).
- (6) I turn now to the enrolment application form in the name of Anthony Wesley Kynaston (Exhibit 371) — also Exhibit 'Q2' in Heath's Report. Kynaston declined to travel from outside Queensland to give evidence to the Inquiry. He could not be summoned and a summary of the tape-recorded interview to which I have already referred was tendered (Exhibit 396). I have already referred in part to this interview, but this summary shows that a copy of the relevant form was faxed to Kynaston during the interview and Kynaston said none of his (Kynaston's) writing appears on Exhibit 371, that the signature is not his and that he has no knowledge of the form and, further, that he was not consulted about his being falsely enrolled at the 37 Drury Street, Hill End, address, that he never resided at 37 Drury Street, Hill End, and does not know of that address.
- (7) In the case of the enrolment application in the name of Matthew James Crowley (Exhibit 373) dated 13 January 1986, Crowley was in London at the time of the Inquiry hearings. A summary of a tape-recorded interview with him — the interview was held on 4 January 2001 — was tendered (Exhibit 397). A facsimile copy of the relevant enrolment application form was sent to Crowley and he was further interviewed on 5 January 2001 after he had seen the form. He said he had no recollection of the form, that his handwriting does not appear anywhere on the form, that the signature is not his, as he always signs 'M J Crowley' to avoid confusion with his mother's signature, which is M Crowley. Crowley said

he never discussed moving to the address shown in Exhibit 373 — 7 Queen Bess Street — in order to vote in a plebiscite and he does not recall ever discussing the matter with Barbagallo. I mention also that Heath's report shows that Heath had before him a photocopy of Crowley's enrolment form (Q3 in his report). Heath said that he examined three signature images purportedly 'A Kynaston', 'M Crowley' and 'J Boccabella' respectively Q2, Q3 and Q4, and that examination allowed him to find and observe:

- Notwithstanding some degree of similarity in the form or appearance of all three signature images (particularly Q3 and Q4), there is no actual evidence which would substantiate any level of opinion suggesting common authorship.
- The signature Q2 bears no discernible relationship to Q3 or Q4 other than containing a terminal embellishment in a similar position and angle.
- Signatures Q2 and Q3 do display a strong similarity in the 'garland'/angular nature of both signatures and the presence of a similar terminal embellishment.
- Aside from the pictorial similarities there are no actual significant letter constructions present which are common to the signature group and which would serve to link any or all of the signatures together.
- The possibility cannot be ruled out that all or some of the questioned signatures are completed by the one writer. However there is no real evidence present to support such a conclusion notwithstanding the pictorial similarity of the questioned signatures.

Q2 (Kynaston's form) is one of the five documents in which, as already stated, Heath opined:

The upper-case printing and figures present have been completed by the one writer.

Counsel Assisting have submitted that there is a prima facie case of forgery under section 486 of the Criminal Code of Queensland against Barbagallo in respect of the enrolment application forms in the names of Brown, Heeremans, Kynaston and Crowley and that I should recommend that these matters be referred to the Queensland Director of Public Prosecutions for her consideration as to whether or not Barbagallo should be charged with forging all or any of these four application forms.

Counsel Assisting further submit that, for reasons already appearing, there should be no similar referral to the Queensland Director of Public Prosecutions in respect of the enrolment application forms in the names of Kaiser, Cherry and Boccabella and, as already stated, I agree with this course. However, in respect of the matters of Brown, Heeremans, Kynaston and Crowley, I must, before deciding whether or not to recommend referring each of these to the Queensland Director of Public Prosecutions, bear in mind that since 1986 the definition of 'forgery' then existing in the Criminal Code of Queensland has been repealed and a new definition inserted. I must also consider what effect, if any, section 11 of the Criminal Code of Queensland has on my decision.

In 1986, section 486 of the Criminal Code of Queensland which defined 'forgery' read as follows:

- (1) A person who makes a false document or writing, knowing it to be false, and with intent that it may in any way be used or acted upon as genuine, whether in Queensland or elsewhere, to the prejudice of any person, or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in Queensland or elsewhere, is said to forge the document or writing...
- (2) ...
- (3) In this section —  
**'make a false document or writing'** includes altering a genuine document or writing in any material part, either by erasure, obliteration, removal, or otherwise; and making any material addition to the body of a genuine document or writing; and adding to a genuine document or writing any false date, attestation, seal, or other material matter.

- (4) It is immaterial in what language a forged document or writing is expressed.
- (5) It is immaterial that the forger of anything forged may not have intended that any particular person should use or act upon it, or that any particular person should be prejudiced by it, or induced to do or refrain from doing any act.
- (6) It is immaterial that the thing forged is incomplete, or does not purport to be a document, writing, or seal, which would be binding in law for any particular purpose, if it is so made, and is of such a kind, as to indicate that it was intended to be used or acted upon.

In 1997, section 486 was repealed. Also in 1986, section 488 read:

Any person who forges any document, writing, or seal is guilty of an offence which, unless otherwise stated, is a crime, and the person is liable, if no other punishment is provided, to imprisonment for 3 years.

This section created the offence.

A new section 488, which began operation on 1 July 1997, reads:

- (1) A person who, with intent to defraud—
  - (a) forges a document; or
  - (b) utters a forged document;
 commits a crime.

Maximum penalty if no other punishment is provided —3 years imprisonment.

- (2) Subsection (1) applies whether or not the document is complete and even though it is not, or does not purport to be, binding in law.

The rest of section 488 concerns punishment in special cases.

‘Forge’ — in ‘forge a document’ — is defined in section 1 of the Criminal Code of Queensland and this definition appeared in an amending Act, which also began operating on 1 July 1997. The new definition reads:

**Forge** a document, means make, alter or deal with the document so that the whole of it or a material part of it —

- (a) purports to be what, or of an effect that, in fact it is not; or
- (b) purports to be made, altered or dealt with by a person who did not make, alter or deal with it or by or for some person who does not, in fact exist; or
- (c) purports to be made, altered or dealt with by authority of a person who did not give that authority; or
- (d) otherwise purports to be made, altered or dealt with in circumstances in which it was not made, altered or dealt with.

Because of the changes in the definitions of forgery, section 11 of the Criminal Code of Queensland must be considered. That section reads:

Effect of changes in law:

- (11) (1) A person cannot be punished for doing or omitting to do an act unless the act or omission constituted an offence under the law in force when it occurred; nor unless doing or omitting to do the act under the same circumstances would constitute an offence under the law in force at the time when the person is charged with the offence.
- (2) If the law in force when the act or omission occurred differs from that in force at the time of the conviction the offender cannot be punished to any greater extent than was authorised by the former law or to any greater extent than is authorised by the latter law.

If I conclude that there is evidence, substantial and reliable evidence, capable of

proving that Barbagallo did forge one or more of the 1986 enrolment applications, it becomes necessary in each case to identify what act of Barbagallo's may have constituted the offence of forgery and then to consider whether or not that same act may have constituted or is capable of constituting an offence under the present law, i.e. under the law in operation since 1 July 1997.

First, under section 486 — in the case of each of Brown, Heeremans, Kynaston and Crowley — the evidence from each of these persons is such that his application for enrolment was false in that at least the address shown for him and at which he was to be enrolled was false.

In addition, each of these four false applications was lodged with the Electoral Office. There is no evidence that it was Barbagallo who actually lodged these forms — had he done so he would have uttered them.

If Barbagallo wrote the false address on any of these four application forms, it would not be surprising if the jury, on having proof that the originals of the forms were lodged with the electoral officer, concluded that the person who prepared each form intended that some person in the Electoral Office, believing the form to be genuine, should be induced to act upon it and cause each of Brown, Heeremans, Kynaston and Crowley to be enrolled at the false address shown in the relevant application form. Thus, it seems to me there is credible evidence capable of proving forgery within section 486, that forgery being based on the insertion of the false address.

Further or alternatively, if the jury were satisfied beyond reasonable doubt that Barbagallo, without the consent or approval of any of these four persons, himself signed the signature of each of these four persons on his respective form or aided in such signature, that would be a further basis for a finding of forgery. As I have said, the repealed section 488 created the offence of forgery then in existence.

Next, it seems to me that each of the acts to which I have just referred (i.e. inserting the false address and/or signing or aiding in the signing of each person's name, without consent or approval) is capable of falling within at least each of paragraphs (a), (c) and (d) of the definition of 'forge' a document inserted in 1997 — and particularly within paragraph (c).

In my opinion, the state of the evidence before the Inquiry is such that if repeated at a trial that evidence is capable of proving Barbagallo's criminal responsibility for one or more of the above four alleged 1986 forgeries. If any prosecution occurs, the ultimate decision will rest with the jury — the tribunal of fact. It appears that under both the 1986 and 1997 legislation Barbagallo, if convicted, would be exposed to the same maximum penalty.

I should add that in Barbagallo's case, any charge of forgery will contain no element of a person inflicting economic loss or of obtaining some economic advantage as a result of the forgery.

In my view, such an element is not necessary for a charge of forgery under both the 1986 and 1997 legislation. Support for this view is found in a speech of Lord Radcliffe from *Welham v. DPP* (1961) AC 103; (1960) 1 All ER 805 approved by the House of Lords in *R v. Terry* (1984) 1 All ER 65. Terry was charged with and convicted of fraudulently using an excise licence contrary to section 26(1) of the Vehicles (Excise) Act 1971 (UK). The licence related to an Escort car but Terry used it on his own Cortina with the intention that a police officer who saw it would wrongly think the Cortina was properly licensed. Lord Fraser of Tullybelton, with whose reasons other members of the House of Lords agreed, applied two passages from a speech of Lord Radcliffe in *Welham v. DPP* (1961) AC 103 and (1960) 1 All ER 805. In *Welham*, the appellant was convicted under section 6 of the Forgery Act 1913 (UK) on a charge of having 'with intent to defraud' uttered a forged hire purchase proposal and a forged hire purchase agreement.

In the second passage cited from Lord Radcliffe's speech (at page 67 of Terry), Lord Radcliffe had said:

There is nothing in any of this that suggests that to defraud is, in ordinary speech,

confined to the idea of depriving a man by deceit of some economic advantage or inflicting on him some economic loss. Has the law ever so confined it? In my opinion, there is no warrant for saying that it has. What it has looked for in considering the effect of cheating on another person and so in defining the criminal intent is the prejudice of that person ... Of course, as I have said, in ninety-nine cases out of a hundred the intent to deceive one person to his prejudice merely connotes the deceiver's intention of obtaining an advantage for himself by inflicting a corresponding loss on the person deceived. In all such cases, the economic explanation is sufficient. **But in that special line of cases where the person deceived is a public authority or a person holding a public office, deceit may secure an advantage for the deceiver without causing anything that can fairly be called either a pecuniary or an economic injury to the person deceived. If there could be no intent to defraud in the eyes of the law without an intent to inflict a pecuniary or economic injury, such cases as these could not have been punished as forgeries at common law, in which an intent to defraud is an essential element of the offence, yet I am satisfied that they were regularly so treated.** [my emphasis]

Lord Fraser of Tullybelton (at page 68) also relied on the following dictum of Lord Diplock's from *Scott v. Commissioner of Police for the Metropolis* (1975) AC 819 at 841:

**Where the intended victim of a 'conspiracy to defraud' is a person performing public duties as distinct from a private individual it is sufficient if the purpose is to cause him to act contrary to his public duty, and the intended means of achieving this purpose are dishonest. The purpose need not involve causing economic loss to anyone.** [my emphasis]

Although any charge of forgery against Barbagallo will not contain any element of intent to defraud, there is in a forgery case an element of deceit or dishonesty and I consider the emphasised passages set out above illustrate the principle involved here where, if there is a prosecution, the Crown case will no doubt be that the relevant electoral forms were intended to deceive an electoral officer.

In my opinion, the evidence led at this Inquiry to which I have referred is capable of proving that Barbagallo, by his forgery, intended to deceive a person who had a public duty to perform, namely an electoral officer who was required to keep an electoral roll for a particular electoral district, by leading him to believe that in each case the enrolment form was genuine. Each of these four forms purported to be made with the authority of a person who did not give that authority and each purported to be (but was not) a valid genuine application to enrol at a particular address in the electoral district, which address was falsely put forward as the address at which the applicant lived.

I therefore recommend that the CJC make a report under section 33(2A)(1) to the Queensland Director of Public Prosecutions in relation to the enrolments of Brown, Herremans, Kynaston and Crowley.

## POSSIBLE CONSPIRACY CHARGES AGAINST DAVID BARBAGALLO

For reasons that I shall shortly give, I do not recommend that there be referred to the Queensland Director of Public Prosecutions evidence concerning possible conspiracy charges against Barbagallo in respect of offences under section 117 of the *Electoral Act 1983–1985*, prosecution of which offences is now statute barred.

## SUBMISSIONS ON BEHALF OF DAVID BARBAGALLO

Submissions were made on behalf of Barbagallo by Gilshenan and Luton Lawyers. They are not detailed submissions on the evidence. However, the solicitors list a number of factors that they submit establish that it would be entirely unjustified, not in the public interest, and ultimately worthless, to refer Barbagallo's case to the Queensland Director of Public Prosecutions. It was suggested that I may consider that some of these factors were matters more relevant to the discretion of the Director of Public Prosecutions. In light of my assessment of the evidence led at this Inquiry

concerning Barbagallo, I am of the view that the matters raised by his solicitors are more relevant to the discretion of the Director of Public Prosecutions.

I do not intend listing the factors referred to by the solicitors; however, I am advised that a copy of their submissions would as a matter of course be furnished to the Queensland Director of Public Prosecutions as part of any report under section 33(2A)(a) of the Criminal Justice Act.

## POSSIBLE CHARGES AGAINST MICHAEL KAISER

I turn now to consider the evidence concerning Kaiser and whether I should make any recommendation for referral to the Queensland Director of Public Prosecutions of possible charges against him.

When Kaiser gave evidence before me on 10 January 2001 he accepted that the signature on the electoral enrolment form enrolling him at 11 Seventh Avenue, Coorparoo dated 7 January 1986 (Exhibit 365) is almost certainly his. This evidence cannot be used against him as he has the protection of section 96 of the Criminal Justice Act after objecting to answering and being directed by me to do so. However, there is also the evidence in Heath's report where he states with respect to the 7 January 1986 signature that after having examined 11 specimen signature images purportedly made by Kaiser there are indications that 10 of the specimen signatures had been completed by the same author. He further stated that:

The limit and copy nature of the questioned signature [dated 7 January 1986] and the specimen signature images only allows for a very low level of opinion to be expressed. Although there is certainly evidence present which connects both the questioned signature image [dated 7 January 1986] and the majority of specimen signature images together, suggesting common authorship.

There is plenty of evidence that Kaiser never resided at 11 Seventh Avenue, Coorparoo. This includes from Kaiser himself, and two persons who were acknowledged to be occupants of the premises at the relevant time, Leanne Marie Ehrlich and Sharon Lea Lucas (then Sharon Lea Cowden).

As I have previously said there is evidence which suggests the rest of the upper-case printing and figures on Exhibit 365 were completed by Barbagallo.

This evidence raises for consideration a number of possible criminal charges.

### 1. Possible charges under section 117 of the *Elections Act 1983–1985* and section 117 of the *Criminal Code of Queensland*

The basis of any charge under the *Elections Act 1983–1985* must be that in 1986 Kaiser falsely enrolled in the South Brisbane electorate. However, as earlier stated, in respect of similar offences by other persons any prosecution on that charge is statute barred. Thus any charge under section 117 of the *Elections Act 1983–1985* cannot be brought against Kaiser.

As for any charge under section 117 of the *Criminal Code of Queensland*, I have already explained why, in my view, Barbagallo committed no offence against that section. The same reasons apply to any action by Kaiser in 1986.

### 2. A possible charge of criminal conspiracy

In light of the evidence of the handwriting on Exhibit 365 and the evidence that Kaiser did not reside at 11 Seventh Avenue, I must consider whether to recommend that a report be made to the Queensland Director of Public Prosecutions in relation to the possibility of Kaiser having in 1986 conspired with Barbagallo to commit one or more offences under section 117 of the *Elections Act 1983–1985*. No time limit applies to any charge of criminal conspiracy.

There could be no charge of conspiracy based on section 541 of the *Criminal Code of Queensland* which deals with conspiracies to commit a crime — an offence under section 117 of the *Elections Act 1983–1985* is not a crime.



Any charge of conspiracy would rely on section 542 and/or section 543(1)(f) of the Criminal Code of Queensland. These sections read:

**542**

- (1) Any person who conspires with another to commit any offence which is not a crime ... is guilty of a misdemeanour and is liable to imprisonment for three years.
- (2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney General.

**543**

- (1) Any person who conspires with another to effect any of the purposes following, that is to say —  
...  
(f) to effect any unlawful purpose ...  
...  
is guilty of a misdemeanour and is liable to imprisonment for three years.
- (2) A prosecution for an offence defined in this section shall not be instituted without the consent of the Attorney General.

Counsel Assisting the Inquiry have submitted that there are a number of reasons why Kaiser should not be charged with conspiracy under 1986 Queensland law. They are:

- (1) The substantive offence — i.e. the offence under section 117 of the *Elections Act 1983–1985* is now statute barred.
- (2) A charge of conspiracy to commit one or more offences under section 117 of the *Elections Act 1983–1985* could be seen as unfairly resurrecting a charge of the substantive offence, namely, breach of section 117 which offence has been statute barred for some 14 years.
- (3) Courts have consistently criticised the bringing against a person of a charge of conspiracy rather than charging the person with the specific offence or offences which the evidence shows to have been committed (see *R v. West* (1948) 1 QB 709; 32 Cr.App.R 152; *R v. Griffiths* (1966) 1 QB 589; 49 Cr.App.R 279).

In my opinion, particularly given that the substantive offences under section 117 have been statute barred for over 14 years, it would be an abuse of a Court's process if conspiracy charges or a conspiracy charge were now brought against Kaiser based on 1986 breaches of the then Elections Act.

In addition, of course, if a charge of conspiracy were to be brought, the consent of the Attorney General would first have to be obtained. I believe that in the circumstances of this case it would not be appropriate for such consent to be given.

**3. A possible charge of perjury**

When Kaiser gave evidence to the Inquiry on 30 November 2000, Mr Hanson asked him:

- Q. Have you ever been involved in falsely enrolling anybody?
- A. No.
- Q. Never?
- A. No.

Kaiser gave evidence again on 10 January 2001 when he was questioned about Exhibit 365, which was the enrolment application dated 7 January 1986 in Kaiser's name to be enrolled at 11 Seventh Avenue, Coorparoo. When asked what he wanted to say about the document, he replied:

Well, again, it's a very old document. It's 15 years old and I don't recall anything about it but I do agree that that signature looks like mine.

A little later (T2943–4) he said:

I have no recollection of signing this form or filling it out. In fact, I don't believe any other writing apart from the signature is mine.

The answers which he gave in relation to this document were made after Kaiser had claimed privilege but had been required to answer the questions. The answers are admissible on his trial on a charge of perjury (section 96 CJ Act). Given the definition of 'perjury' in the Criminal Code of Queensland (section 123), then on any charge of perjury brought against Kaiser the Crown will bear the onus of proving beyond reasonable doubt that the answers that he gave on 30 November 2000 were knowingly false.

There is before the Inquiry the following evidence capable of proving that Kaiser's statement was knowingly false. That evidence is:

1. The enrolment application (Exhibit 365) in his name.
2. Evidence from Bermingham and Powell that Kaiser was involved in false enrolments in East Brisbane in 1993 and 1996. (This evidence is discussed in greater detail elsewhere in the report.)

As to the first of these matters, I mention the following passage in Kaiser's evidence when questioned by Mr Hanson on 10 January 2001:

- Q. Mr Kaiser, how is it that on 30 November you gave an unequivocal no to a question, 'Have you ever been involved in falsely enrolling anybody whereas today, and indeed perhaps six days ago, publicly you acknowledged that you may have done something that would justify your giving up your job?
- A. Well, my answers to you when I last appeared before this Inquiry were truthful answers based on my recollection at that time.

He was then asked:

- Q. And what has made you change your answer now?
- A. I've been shown a form which I've acknowledged in all likelihood I have signed although I don't know if the other writing on the form is mine, I don't believe.

There are a number of matters that suggest that his answers were truthful and that, based on his recollection at that time, his answers were probably fair responses. Although one might very well believe that if a person engaged in a false enrolment, that person is unlikely to forget that event, nevertheless, by the time Kaiser was questioned in November 2000, a period of almost 15 years had elapsed. In addition, although Mr Hanson's question was a very specific one, and used the word 'ever', it may have been that in November Kaiser's mind was not focused on events apart from those which were the subject of the terms of reference. In addition, it appears true to say that Kaiser did not see Exhibit 365 (apart from when he apparently signed it in 1986) until when in the witness box on 10 January 2001.

The evidence from Bermingham and Powell pointed to Kaiser's involvement in false enrolments in East Brisbane in 1993 and 1996. While, if accepted, their evidence diminishes the force of Kaiser's response on 10 January 2001, it must be remembered that on their own evidence Bermingham and Powell claimed themselves to be accomplices with Kaiser and other persons in the 1993 and 1996 false enrolments in East Brisbane. Kaiser denied being involved in such false enrolments.

Bermingham and Powell are the only persons whose evidence, if given to a jury, detracts from the force of Kaiser's response that his November 2000 answers were truthful based on his recollection at that time. However, in my opinion, evidence from Bermingham and Powell alleging Kaiser's involvement in the 1993 and 1996 false enrolments in East Brisbane would be inadmissible at a trial of Kaiser on a perjury charge.

In my view, if Kaiser were to be charged with perjury, then the case against him is not so clear that one could say with any real degree of certainty that a conviction would very likely result. The CJC has a practice of referring to a

Director of Public Prosecutions only clear cases of perjury. I am not persuaded that the case against Kaiser is one such case. After considering the evidence, I agree with Counsel Assisting this Inquiry that I should not recommend the referral to the Queensland Director of Public Prosecutions of a charge of perjury against Kaiser.

## POSSIBLE CONSPIRACY CHARGES AGAINST JAMES BOCCABELLA AND JOHN CHERRY

If conspiracy charges were to be brought against each of those persons they must be based on sections 542 and/or 543(1)(f) of the Criminal Code of Queensland. The substantive offences each of these persons may have committed are now statute barred and, for reasons I have already given, I do not recommend that evidence concerning each of Boccabella and Cherry conspiring with Barbagallo to commit breaches of section 117 of the *Elections Act 1983–1985* be referred to the Queensland Director of Public Prosecutions.

## THE ENROLMENT OF PAUL LUCAS

Exhibit 346 is a photocopy of a claim for enrolment by Paul Thomas Lucas. The address at which he claimed to be enrolled was 11 Seventh Avenue, Coorparoo. He signed the form on 14 January 1986, the date which appears on Exhibit 346 and is acknowledged to be incorrect. The address '11 Seventh Avenue, Coorparoo' was the same address used for the enrolments of Philip Morrison Brown, Olaf Martin Heeremans and Michael Hans Kaiser.

The question which has arisen is whether there is evidence to prove that the claim by Lucas to enrol at 11 Seventh Avenue, Coorparoo was false. The claim for enrolment was lodged with the Electoral Office at 12.07 p.m. on 20 January 1986. In January 1986, Sharon Lea Cowden resided at 11 Seventh Avenue, Coorparoo. Exhibit 341 is a copy of her claim dated 22 August 1984 and made under the *Elections Act 1983–1985* for enrolment at that address. Exhibit 342 is a copy of a similar claim by her dated 4 December 1984 made under the *Commonwealth Electoral Act 1918*. In 1990, Sharon Cowden married Paul Lucas. Both gave evidence to the Inquiry. In his evidence, Lucas swore that he signed the enrolment in his name and that he lived at 11 Seventh Avenue, Coorparoo, at the time he signed Exhibit 346. He also swore that he had lived at the same address for the necessary qualifying period, namely, three months. Exhibit 346 contains the following relevant statement immediately above Lucas' signature:

I AM QUALIFIED TO BE AND CLAIM ENROLMENT AS A STATE ELECTOR  
BECAUSE —

- (i) ...
- (ii) ...
- (iii) I have lived in the district continuously for the preceding 3 months;

I declare that the statements made in this claim including the details of my personal particulars are true to the best of my knowledge and belief.

At the foot of the form is 'electoral district of South Brisbane'.

Effectively then, on 14 January 1986, Lucas declared that he had lived in the electoral district of South Brisbane continuously for the preceding three months.

Mrs Lucas from the witness box supported her husband's claim that he lived at 11 Seventh Avenue, Coorparoo, at the time he signed the form and for the preceding three months.

The evidence before the Inquiry which concerned where Lucas lived in 1985 and 1986 was difficult to reconcile. I should at this stage say that Exhibit 346 showed that his former address was 3 Igerne Court, Carina — this address was not in the South Brisbane electoral district — it was his parents' address.

Both Mr and Mrs Lucas swore in effect that the milestone from which they based their

evidence was Mrs Lucas's 21<sup>st</sup> birthday on 18 August 1985 and that their relationship was quite serious from then. Mrs Lucas said that Paul came to live at Seventh Avenue shortly after her birthday.

When Mr Hanson pointed out to Lucas that on 1 October 1985 he had signed a claim (See Exhibit 344) to be enrolled at his parents' address at 3 Igerne Court, Carina — and it was lodged with the Queensland Electoral Office — he accepted the accuracy of Exhibit 344 but pleaded the lapse of 15 years. Exhibit 344 was witnessed by Sharon Cowden (now Mrs Lucas). Exhibit 344 showed Lucas's former address as 18 Newbolt Street, Holland Park. While given the lapse of time, what Lucas said may be thought an acceptable explanation for the inconsistency demonstrated by Exhibit 344, it is not so easy, as Mr Hanson points out, to reconcile the declaration on Exhibit 346 (the Seventh Avenue form) that he had lived there continuously for three months (i.e. from 14 October 1985) with the fact that on 1 October 1985 he signed the claim to be enrolled at his parents' home.

The evidence from Mr and Mrs Lucas concerning Lucas ceasing to live at Seventh Avenue, Coorparoo, also poses problems. Both gave evidence to the effect that in mid-February or March 1986 Lucas took up residence in a flat at University of Queensland campus at St Lucia. Yet Exhibit 346 — the form in which Lucas claimed to enrol at Seventh Avenue was dated a matter of weeks earlier — 14 January 1986.

Then on 1 May 1986 he signed a claim to enrol at his parents' address at 3 Igerne Court, Carindale (see Exhibit 347). This claim was that he was entitled to enrol 'in federal and Queensland elections'. Counsel Assisting have submitted that on the evidence, Lucas's claim to enrol at 11 Seventh Avenue, Coorparoo, appears quite clearly to have been an opportunistic enrolment for the purposes of the 1986 South Brisbane plebiscite. I agree with this submission and also with their further submission that 'there is nothing wrong with that if he genuinely lived there'. I have considered all the evidence touching Lucas's claim to enrol at Seventh Avenue. I have also considered the lengthy submissions made on his behalf.

In my view, the evidence as it presently stands, is not capable of proving beyond reasonable doubt that Lucas's claim to enrol at 11 Seventh Avenue, Coorparoo was false. Even if it were, then, for reasons I have already given, there can be no prosecution for breach of section 117 of the *Electoral Act 1983–1985* or section 117 of the Criminal Code of Queensland. Accordingly, I shall not be recommending that the matter of Paul Thomas Lucas be referred to the Queensland Director of Public Prosecutions to consider possible prosecution action.

## VARIOUS PLEBISCITES AND POSSIBLE PLEBISCITES

The term of reference relevant to this chapter is:

2. To conduct an investigation into such other alleged conduct, which constitutes or could constitute a criminal offence, in respect of any plebiscite conducted within the years 1993 to 1997 inclusive for the selection of the candidate of the Australian Labor Party for any electorate of the Legislative Assembly or the position of councillor of any local government within Queensland, in respect of which there could be a reasonable suspicion of official misconduct;

This term of reference authorised the investigation of allegations concerning plebiscites not specifically referred to in the terms of reference for any electorate of the Legislative Assembly or any position of councillor of any local government within the years 1993 to 1997 in respect of which there could have been a reasonable suspicion of official misconduct. Term of reference number 3 in the original Terms of Reference authorised me to conduct preliminary investigations as were appropriate to determine whether there was such a reasonable suspicion of official misconduct. It also authorised investigation into conduct concerning the same plebiscites which constituted or could constitute a criminal offence.

Relying on these two terms of reference, preliminary investigations were conducted into a number of allegations that either related to a plebiscite nominated in the allegations or could have related to an unspecified plebiscite. In these categories the following matters were the subject of public hearing:

- (A) the 1997 plebiscite for the state electorate of Springwood
- (B) the 1996 plebiscite for the Brisbane City Council ward of East Brisbane
- (C) possible plebiscites in the state electorate of Redlands.

In relation to (A) and (B), there is evidence capable of suggesting that fraudulent electoral enrolments were made for the purposes of the nominated plebiscite. In relation to (C), although there is evidence capable of suggesting that there were fraudulent electoral enrolments, the evidence did not disclose a relevant plebiscite in Redlands. I will return to the purpose suggested by the evidence when I discuss (C).

I will now discuss each of these matters in turn.

### A. THE 1997 PLEBISCITE FOR THE STATE ELECTORATE OF SPRINGWOOD

#### Background

The ALP held a plebiscite in early 1997 to choose its candidate for the state seat of Springwood for the 1997 State Election.

The contenders in the plebiscite were John Carroll and Grant Steven Musgrove. Carroll was aligned with the Left faction and Musgrove was a member of the AWU faction.

Carroll did not give oral evidence to the Inquiry. Grant Musgrove did give oral evidence on 28 and 29 November 2000. At that time Musgrove was a Member of the Legislative Assembly.

Musgrove stated in evidence that he had been a member of the ALP since March 1992. Musgrove won the Springwood plebiscite and went on to win the state seat of Springwood in the 1997 State Election. According to the oral evidence he gave to the Inquiry, the plebiscite count was something in the order of 38 to 11 or 38 to 9 in his favour.

## **The Ronchi allegations**

John Paul Ronchi gave oral evidence before me on 27 November 2000 concerning his knowledge of the plebiscite for Springwood. He explained that the Springwood electorate had two ALP branches — Springwood and Logan East (formerly Rochedale South). He gave evidence that the Logan East branch was aligned to the AWU faction of the ALP and its candidate was Musgrove. Ronchi stated that Carroll was a member of the Springwood branch and its candidate. Ronchi stated that he was a member of the Logan East branch.

Ronchi stated that the main people behind the Logan East branch were Grant Musgrove and his brother, Ashley Musgrove, along with a group of people that he had met at university. He explained that Grant and Ashley Musgrove had held various offices in the ALP and Aaron Broughton was the Secretary during the time that he was a member of the branch in the period early 1994 until late 1998. Broughton was Grant Musgrove's electorate officer at the time of the public hearings. According to Ronchi, these office holders were AWU aligned.

Ronchi gave evidence that he lived with his parents at 2 Benita Court, Rochedale South, at around the time of the plebiscite. He explained that his parents lived there and had done so for about 20 years with various members of his family.

Ronchi stated that at Grant Musgrove's residence at 11 Dalton Court, Springwood, a couple of months before the plebiscite, he had a conversation with either Grant or Ashley Musgrove or perhaps both. Although Ronchi said that he could not remember the precise conversation, he testified that the effect of it was that he was asked to have two people enrolled at 2 Benita Court. During the discussion it was explained that mail would be arriving for these two people and he could deliver it to 11 Dalton Court. He stated that he did not recall being told during the conversation who it was that would be enrolled at his place, but he did receive mail for two people who never resided at 2 Benita Court. Ronchi confirmed Australian Electoral Commission records that Robert Bruce McCall and Mohammed Kahlil were the two persons who had been enrolled at his place. He testified that they never resided at 2 Benita Court. The enrolment form for McCall is dated 3 June 1996 and the one for Kahlil is dated 4 April 1996. The enrolment forms are Exhibits 232 and 233 respectively. Ronchi stated that the two persons were not enrolled at his home at the same time and indicated that for some considerable time he had received mail for one of the persons and less mail for the other.

Ronchi said that he had a recollection of overhearing conversations involving Grant and Ashley Musgrove with regards to other people moving people on the electoral roll by bringing them into the electorate.

Ronchi described an incident which he said occurred close to the cut-off date for the lodgement of the ballots for the plebiscite. He explained that Carroll, who had been a family friend for a number of years, had come to the family home — 2 Benita Court — and asked his parents whether McCall and Kahlil lived at that address. According to Ronchi, his parents told Carroll that they did not live there and his parents signed a handwritten note written by Mrs Ronchi dated 22 May 1997 to that effect. A copy of that document was tendered before me (Exhibit 234).

Ronchi stated that shortly after Carroll had come to his parents' home he, Ronchi, decided to speak to either Grant or Ashley about why Carroll would want a written statement that the two people did not live at 2 Benita Court. He said that he went to 11 Dalton Court and, as far as he could recall, spoke to Ashley Musgrove. Although he said that he was unsure whether Grant was present, his recollection is that Grant was present and that he asked him to tell his parents not to sign any document. He stated

that he recalled saying to Grant that he could not tell his parents to write something that was not true. Ronchi said that he was not familiar with plebiscite and electoral enrolments requirements and so asked whether there was a problem with Kahlil and McCall being enrolled at his place. He said that Ashley Musgrove told him that it was not a problem 'if you don't have a fixed address you can be enrolled anywhere in the State and so you just say these people don't have a fixed address'.

According to Ronchi, he returned and discussed the matter with his parents and he and his parents became distressed. He subsequently returned to 11 Dalton Court and told either Ashley or Grant Musgrove that it was putting a considerable strain on his relationship with his parents. According to Ronchi, he was told that it was 'okay' and they would move them from his address. Ronchi confirmed the electoral enrolment forms by which they were eventually moved out of his address.

Ronchi stated that neither Warwick Powell nor Lee Bermingham played any part whatsoever in the plebiscite as by that time the AWU faction grouping within Young Labor had split and there were no discussions with Bermingham and Powell.

McCall confirmed the evidence of Ronchi that he had falsely enrolled at 2 Benita Court at the request of Grant Musgrove. McCall confirmed that the signature on the electoral enrolment form moving him to 2 Benita Court was his. The relevant enrolment form is witnessed by McCall's wife, who was then his girlfriend. He said that the request occurred at 11 Dalton Court, but indicated that there was no coercion or duress placed upon him to participate.

McCall acknowledged that his wife was present during the conversation with Grant Musgrove and that his wife was also enrolled on the electoral roll at an address in Springwood at which she never resided. This address was 5/16 Dorset Drive, Springwood. McCall stated that he had discussions with Paul Harrison (who resided at that address) in relation to its use by his wife.

Kahlil is overseas and did not give evidence. There is no evidence that Kahlil's enrolment was procured by forgery. McCall's wife lives interstate and was not called to give evidence. Once again there is no evidence that the enrolment in her name was procured by forgery.

## Other enrolments

Paul James Harrison gave evidence before me that he had been a member of the AWU faction in 1993–94. He stated McCall's wife never resided at 5/16 Dorset Drive, which was the address of his family home. Harrison agreed with Counsel Assisting's suggestion that there was a scheme afoot at that time to enrol young people at his parents' address falsely for a purpose associated with Grant Musgrove's political career. Harrison stated that he was 'pretty confident' that he was consulted by 'Grant Musgrove or one of the Musgroves' in relation to the enrolment, but he could not recall details of any of the conversations. Harrison testified that two similar false enrolments occurred in relation to his parents' place in 1998 — one of which was a further enrolment in the name of McCall's wife, who had been re-enrolled at her correct address in the intervening period.

Harrison stated that he believed that he had been a party to false enrolments in the Springwood area, but he could not say for sure. Harrison testified that he considered the reason for any false enrolment in the Springwood area would have been to obtain votes for state conferences rather than any plebiscite. He indicated that he was not aware of any person using the false enrolments for the purposes of voting at a state or federal election.

Jacqueline Marie O'Mara was another person who, in evidence before me, admitted falsely enrolling in the Springwood electorate at the request of Grant Musgrove. She stated that she never resided at 35 Barbaralla Drive, Springwood, notwithstanding an electoral enrolment form in her name at that address dated 2 July 1996 (Exhibit 251). She acknowledged that the writing on the form looked like hers as did the signature. She indicated that although she could not remember signing the form, she could recall

that when she joined the Logan East branch Grant Musgrove gave her a number of forms to sign. She said that she had assumed the forms were to be used for internal Party use and that Barbaralla Drive would be used as a mailing address for ALP mail. She added that although she could not recall signing the particular form, the night she joined the branch of Logan East was the only time she had ever signed anything 'as part of that branch'.

She confirmed that she did vote in the Springwood plebiscite in 1997, notwithstanding the fact that she was living in Runcorn in the state electorate of Sunnybank at the time. She gave evidence that she voted at the plebiscite in Springwood after receiving a telephone call from Grant Musgrove saying that there were ballot papers that had been sent which she had to fill out. She said that she then travelled to his home at Dalton Court to complete the ballot papers. She gave evidence that after she filled the ballot paper out in the way that Grant Musgrove had indicated, she left the ballot paper with him. She stated that she did not vote at the state election when she was enrolled at Barbaralla Drive. However, O'Mara admitted that she did vote at a council election whilst enrolled at Barbaralla Drive, notwithstanding the fact that she lived at Runcorn at the time. She could not recall whether anyone sought to have her vote at that election.

In the examination of O'Mara by Mr Zillman (presumably on behalf of Grant Musgrove), O'Mara acknowledged that it may have been a possibility that the discussions she had attributed to Grant Musgrove were with other people. However, it is fair to say that her final position was that this possibility was extremely remote.

Further evidence of false enrolments came from Sean David McClintock. He gave evidence to the Inquiry that he was a member of the ALP from 1995 until 1997 or 1998. He said that Aaron Broughton had asked him to join the Springwood branch. McClintock stated that he was at school with Broughton and they had been friends for years, but that in about mid-1998 their lifestyles became totally different and contact did not continue. It was suggested by Mr Zillman (presumably on instructions from Broughton) that McClintock and Broughton had had a falling out and McClintock had come to 'actively dislike' Broughton. However, McClintock denied this.

McClintock gave evidence before me that in 1993 he lived at 74 Kallista Road, Rochedale South — this property was owned by Broughton's mother. He said he resided there for approximately a year and then moved to his parents' place on the Coast.

Counsel Assisting showed McClintock an enrolment form in his name at 74 Kallista Road, Rochedale South, dated 4 June 1996 (Exhibit 244). McClintock stated the writing on the form, which is witnessed in the name of Broughton, was that of Broughton's. He stated the signature looked like his and indicated that Broughton had approached him to enrol at that address. He indicated that at that time he did not reside at that address. McClintock said that he was not sure why Broughton wanted him to be enrolled in the Rochedale area although he conceded it had something to do with voting. He told me that he never voted in an election on the basis of being enrolled at 74 Kallista Road, nor had he ever been shown any ballot papers to vote at a plebiscite. In examination by Mr Zillman, McClintock indicated that he may have stayed at 74 Kallista Road overnight on a number of occasions and once stayed there for a week over Christmas, but nothing more in the period around 1996–97.

McClintock gave evidence before me that Broughton approached him again in 1998 to have him enrol once again at 74 Kallista Road. He was shown Exhibit 246, which is an enrolment application form in his name at 74 Kallista Road dated 21 May 1998. It too is witnessed in the name of Broughton. According to McClintock, he was asked by Broughton to vote for Grant Musgrove in the state election, which he did notwithstanding the fact that he did not live in the Springwood area. McClintock stated that he told Broughton that he had voted at Springwood.

In evidence Broughton stated that the only part he played in the 1997 Springwood plebiscite was that he would have spoken to his family about it. He indicated that he could not recall having any discussions with any person requesting them to move their electoral address to 74 Kallista Road. He stated that this would not have occurred if



the person was not going to reside at his parents' place. In relation to Exhibits 244 and 246, Broughton said that although the handwriting and signature looked similar to his, he could not recall the two enrolment forms. Broughton confirmed that McClintock had stayed at 74 Kallista Road for an extended period on only one occasion, but that he may have stayed on many occasions overnight or maybe for two nights. When asked whether those shorter periods of time entitled McClintock to enrol at 74 Kallista Road, Broughton answered that he was not sure as he did not know what the electoral laws said about the matter. He added that 'he wouldn't imagine so, but I don't think I've ever read the Electoral Act'. He acknowledged that part of his functions as electorate officer for Grant Musgrove was to assist constituents to complete electoral enrolment forms, which were situated at the front counter of the electoral office for the benefit of constituents.

## Evidence of the Musgroves

**Ross Andrew** Musgrove, the brother of Ashely and Grant Musgrove, gave evidence before me on 28 November 2000. He indicated that he had been a member of the ALP from 1992 until 2000, but was no longer a member. He explained that he worked in Jim Elder's electorate office with Joan Budd until the Mundingburra by-election was lost in early 1996. He said that he had heard widespread rumours concerning false enrolments, but could not specifically recall whether he had ever been told by his brothers, Ashley or Grant, what they knew about the matter. When asked whether he had had any dealings with false enrolments himself, he answered 'not that I recall'.

**Ashley** Musgrove in evidence before me on 28 November 2000 stated that he joined the ALP in 1992. He said he initially joined the Chardons Corner branch and then moved to the Springwood branch and from there to the Rochedale South branch. Ashley Musgrove denied that he ever participated in falsely moving McCall and Kahlil to 2 Benita Court, Rochedale South. He stated that he could not recall any of the conversations that Ronchi had attributed to him and his brother Grant. When Counsel Assisting asked Ashley Musgrove whether he had ever knowingly or falsely enrolled himself in an electorate, Ashley responded, 'not that I recall, no'. When Counsel Assisting asked him whether he had ever asked other people to move on paper to a false address, he answered 'not that I can ever recall'.

I have already referred to Ashley Musgrove when discussing the evidence concerning the 1993 plebiscite for the Brisbane City Council ward of East Brisbane.

When **Grant** Musgrove gave evidence before me, Counsel Assisting initially canvassed with him his participation in the 1993 plebiscite for East Brisbane, as well as his possible participation in false enrolments in the state electorate of Archerfield in 1994. I have discussed these matters earlier in the report, but suffice to say that Grant Musgrove acknowledged that it was a possibility that he had been part of a scheme to falsely enrol people in East Brisbane in 1993 for the plebiscite.

Grant Musgrove stated that there was virtually no preselection campaign for the plebiscite. He indicated that he was not really concerned about the votes for the plebiscite because no-one thought Springwood was a winnable seat. He indicated that John Carroll was not well liked and that 'a drover's dog' could have won the preselection against Carroll.

Grant Musgrove said that he had no recollection of the conversations that Ronchi attributed to him and his brother Ashley. When asked whether he was prepared to deny Ronchi's evidence, he said, 'Well I don't have a memory of it so I can't possibly confirm or deny it'. He indicated he did not know where Kahlil lived and was not sure where McCall lived at the time.

When Counsel Assisting questioned Grant Musgrove concerning the evidence given by O'Mara, he responded that he found it hard to believe that anyone would have been presented on the night of their very first branch meeting with electoral enrolment forms. However, he acknowledged that the conversation involving his request to attend his place to have her complete the ballot papers may well have occurred. He stated that he presumed she lived in the area at the time.

Grant Musgrove explained that he may have met Sean McClintock once or twice and only knew him very vaguely.

Grant Musgrove acknowledged that he had witnessed an electoral enrolment form moving Mark Ian Stevens to Flat 2/18 Magellan Drive, Springwood, on 27 March 1995. In a statement to the CJC, Stevens had stated that he had never lived at that address. When asked about the electoral enrolment form, Musgrove stated 'I wouldn't know where Mark Stevens lived'. The electoral enrolment application form is Exhibit 265.

Counsel Assisting questioned Grant Musgrove in relation to an enrolment application form dated 12 January 1996 in the name of Anna Leigh Porter moving her to Grant Musgrove's address at 11 Dalton Court (See Exhibit 267). When Counsel Assisting suggested that Porter never resided there, but had merely stayed there overnight occasionally, Musgrove stated 'Oh, probably a fair comment'.

After Counsel Assisting had discussed a number of enrolment application forms with Grant Musgrove the following questioning of Musgrove took place (T2214). (I have previously referred to this extract when discussing the 1993 plebiscite for East Brisbane but I consider it appropriate to repeat it here):

Mr Hanson:

Q. Mr Musgrove, do you agree it's a fair comment to the effect that what you've told us today and yesterday, from what you've told us, it appears that you were prepared to engage in falsely enrolling people? You were prepared to do it?

A. Probably.

Q. Yes, but you can't remember whether you did it or not?

A. Well, as I — I mean, I've signed — as I gave evidence before I've signed so many enrolment forms I couldn't tell you the details of one of them.

Chairman:

Q. Whereabouts did you learn how to falsely enrol people?

A. Certainly there was a culture in the Party of those sort of things happening, yes.

Q. When did you first become aware of that culture being present in the Party?

A. Probably in the first two years in the Party at some point in time.

Q. Well, you've said you joined about March 1992?

A. Yes.

Q. So you learned in the first two or three years?

A. Oh, yes.

Q. And I think from what was said by Mr Hanson to you there are allegations made against you that you were asked to assist in the 1993 East Brisbane plebiscite; is that correct?

A. That's the allegation as I understand it, yes.

Q. Yes, and you don't recall whether you did assist; is that what you're telling us?

A. That's what I'm telling you, yes.

Q. Even though you've had some documents shown with your signatures on them?

A. I mean I — I think on the balance of probability, you know, I did assist but I can't actually recall that occurring.

## Conclusion

The evidence before the Inquiry concerning this plebiscite is capable of suggesting that a number of consensual false enrolments were made by various persons. However, for the reasons I have already expressed relating to the expiration of the time limitation for prosecuting persons who may have committed any offences relating to consensual false enrolment, I have not considered whether any such matter should be

referred to a State or Commonwealth Director of Public Prosecutions to decide whether any prosecution should be begun. Furthermore, in each of the cases discussed, the applicant stated that he or she either cooperated in completing the false enrolment or was uncertain whether his or her writing was on the document. Accordingly, there is insufficient evidence to establish any case of forgery.

I should add that, for the reasons stated in the introduction of this report, no disciplinary charge of official misconduct is possible.

## **B. THE 1996 PLEBISCITE FOR THE BRISBANE CITY COUNCIL WARD OF EAST BRISBANE**

### **Background**

In 1996 the ALP conducted a plebiscite for preselection of the ALP candidate for the ward of East Brisbane to contest the Brisbane City Council elections in March 1997.

The preselection came about in the circumstances set out in Exhibit 80, which is a copy of a letter dated 11 October 2000 from Cameron Milner, State Secretary of the ALP, to Peter Carne of Carne and Herd, the solicitors for the ALP. That letter, omitting formal parts, relevantly said:

In March 1996 we opened nominations for all BCC wards and Robyn Twell, the then sitting Councillor, renominated and was uncontested and so was endorsed as the ALP candidate for East Brisbane ward.

On 18 November 1996 Robyn Twell wrote a letter to then State Secretary saying that she wished to withdraw her nomination of candidature for East Brisbane ward and therefore a consequent preselection was required to be held.

That subsequent preselection is minuted on 3 December 1996 as being a contest between Dennis Mullins, Catherine Bermingham and Mark Uzelin.

During the course of the ballot Dennis Mullins withdrew his candidature and the final contest was between Catherine Bermingham and Mark Uzelin and was concluded in December 1996.

Catherine Bermingham won that preselection by approximately 46 votes to 25 and the matter did not need to go to the Electoral College.

Catherine Bermingham then became our endorsed candidate for the 1997 Brisbane City Council for the ward of East Brisbane.

This letter explains that the plebiscite was sparked by Robyn Twell's decision to withdraw her nomination as candidate for the East Brisbane ward. The candidates were as set out in the above quoted letter.

Mullins and Catherine Bermingham gave oral evidence to the Inquiry, Bermingham appearing on three occasions. Catherine Bermingham is Lee Bermingham's sister.

Uzelin was not called to give evidence and there is no evidence to suggest that his involvement in the plebiscite was controversial.

Mullins told me when he gave evidence on 23 October 2000 that he was a member of the Labor Unity faction and Bermingham told me when she gave evidence on 29 November 2000 that she had 'only recently ... joined the Left faction' and prior to that she was not a member of any faction. Although Catherine Bermingham may not have been a member of a faction in 1996, it was apparent from the evidence that the AWU faction supported her and that the major contest between Mullins and Bermingham was factionally based.

Catherine Bermingham, having won the plebiscite, was elected councillor at the 1997 Brisbane City Council election. She retains that position to this day.

## The conduct on behalf of the Labor Unity faction

Mullins quite candidly told me that:

- (a) he 'utilised the services of Sean Black, Peter Aicher and Lynda Fraser to actively sign people up to move address for the purpose of the plebiscite only' (T925/13)
- (b) he actively participated in that exercise himself
- (c) two addresses — one at Wellington Street and the other at Rome Street — were used by his faction and that he spoke to persons who lived at these addresses and they agreed that their addresses could be used for his purposes (T925/140)
- (d) he thought something approaching 16 false electoral enrolment forms were filled out (T925) split between the Wellington Street and Rome Street addresses (T929/50)
- (e) the reason he withdrew from the preselection race was 'primarily to preserve the operating alliance between the AWU faction and the Labor Unity faction' (T924/12).

Mullins illustrated what was done by referring to an application form in the name of a person whose name has been suppressed. This form, dated 16 November 1996, showed the applicant applied for enrolment at the Rome Street address — an address at which the applicant did not live. Mullins witnessed the application.

Mullins told me (T928/35) that what he was doing by these false enrolments was 'an act of self-defence or retaliation to that action being perpetrated against me'. Mullins also told me (T929/10–20), that what he did was not original and that the process of moving people into an electorate or ward in order to maximise votes at a plebiscite was a reasonably well-known tactic.

Mr Hanson then asked Mullins:

These people that you asked to help you, did you explain to them that they were cooperating with you in falsifying the Commonwealth Electoral Roll?

He replied:

No, sir, no. To be honest, the — and it's one of those things with the value of 20/20 hindsight, of course — you look at somewhat differently. At the time the sole intention was to circumvent an internal Party rule in the same way that had been done to me in order to maximise benefit within an internal Party procedure. The fact that the Party rule at the time required the person to be on an electoral roll, the sense of doing this thing was very much one still of doing something which was internal to the Party. There was certainly no intention then or later for those people to remain on the roll and to vote at any subsequent election.

Did it not occur to you that falsifying — lodging false information such as this might be an offence — a criminal offence?

No, sir, it certainly did not. I had an awareness that it was not the right thing, of course, and to that extent that it was the wrong thing to do but, certainly, I had no knowledge at the time that it may have constituted a criminal act.

Mullins's views must be read in the light of comments of two members of the Court of Appeal in the application for leave to appeal against sentence by Karen Ehrmann — I have set out those comments earlier in this report.

## The conduct on behalf of the AWU faction

While Mullins was well aware of, and really orchestrated, the false enrolments for his benefit, Catherine Bermingham denied any knowledge of similar manoeuvres for her benefit, although there was evidence from her campaign managers, Lee Bermingham and Warwick Powell, of their awareness of, and participation in, such manoeuvres.

Catherine Bermingham said in evidence that late in 1996 — she was not sure of the month — her brother rang and told her Twell was retiring and asked if she was interested in running in East Brisbane; Catherine said 'yes' as at the time she did not really have a job.

Catherine Bermingham said that Lee Bermingham told her she would have to work very hard because she was not known in the East Brisbane ward and that she would have to get out and talk to all the ALP members within the ward and get their support. She said that at that time she lived at 12 Prince Street, Annerley. Catherine Bermingham gave evidence that when her brother rang to inquire as to her interest, she 'had no idea what the plebiscite would involve'. She went on to say that either Warwick Powell or Lee Bermingham ran her campaign. I will shortly return to her evidence.

On his own admission Warwick Powell was involved in a spate of false enrolments. Again, because of the provisions of the Criminal Justice Act, Powell's admissions cannot be used against him in criminal proceedings. Leaving that aside, time has long since expired for prosecuting Powell for his part in any false enrolments other than forgeries.

On Bermingham's own admission he was involved in giving instructions to Joseph Felice and Powell for false enrolments. He too, claimed privilege against self-incrimination and was directed to answer questions, thereby making his admissions inadmissible against him in criminal proceedings. Once again time has expired for any prosecution for any false enrolments other than forgeries.

Felice also made admissions concerning his involvement in the false enrolments. His answers as well cannot be used against him in criminal proceedings.

I shall turn to the evidence of Powell, Bermingham and Felice in more detail.

## **The evidence of Warwick Powell concerning false enrolments**

When Powell originally gave evidence on 22 November 2000 in respect of the 1996 plebiscite, he stated that he only had a fairly limited awareness of what was going on in that plebiscite. However, when he returned to the witness box the following day he indicated that he had had the opportunity to think more carefully and clearly about what had occurred and proceeded to implicate Michael Kaiser and Gary Fenlon. Gary Fenlon is the State Member for the electorate of Greenslopes.

Counsel for Kaiser, Mr A McSporran, and Counsel for Fenlon, Mr P J Davis, suggest that Powell 'clearly committed perjury' in not providing on 22 November 2000 the detail which he did the following day. It is suggested that Powell and Lee Bermingham discussed the evidence on the evening of 22 November 2000 — Powell having admitted speaking to Bermingham, although denying speaking of matters concerning the Inquiry. I do not consider that it could be established beyond a reasonable doubt that Powell did commit perjury in this regard. In view of the time frame, I consider one could not be satisfied beyond a reasonable doubt that Powell had intentionally or knowingly withheld evidence from me on 22 November 2000.

On 23 November 2000 Powell was shown Exhibit 196, which is an enrolment dated 18 November 1996 for a man whose name was suppressed to enrol at 63 Sinclair Street, Kangaroo Point. The following evidence was then given (T1752):

Q. Yes, go on?

A. And I would like to say that I've had an opportunity to clearly recall the circumstances around this document——

Q. Yes?

A. ——which I'll describe to you shortly. But in recalling the circumstances around this document I would believe that the handwriting on the document is 95 per cent likely to be mine.

Q. Yes?

A. The circumstances around this document were these. As I mentioned to you yesterday, I returned from travel and an exchange visit to the United States on 13 November in 1996. And after recovering from jet lag I proceeded to — on the morning of the Friday of that week I went to ALP office to catch up with Lee Bermingham and to catch up with Mike Kaiser, who had nominated me for the exchange program. So, I went along to give Mike a run down on my trip.

Q. Yes?

A. And just to let him know about my experiences. I also did the same with regards to Lee. Having gone to Party Office and caught up with Lee and Mike and chatted briefly to them both about the trip I asked the question, 'So, what's happening around here?' at which point Mike said to me that, 'Well, there's going to be a plebiscite on for East Brisbane.' I asked why. He explained that they were aware that Robyn Twell was not intending on recontesting the plebiscite and I was a little bit surprised at that but in any event he told me that there was going to be a plebiscite on soon and he then told me that it was imperative that we get numbers into East Brisbane. I asked him why and it was explained to me very clearly that the objective was to up the ante on the Old Guard who [sic] factional leaders had anticipated would nominate a candidate to fill the vacancy.

Mr Hanson:

Yes.

Chairman:

Q. And who said that?

A. Mike Kaiser said that to me.

Mr Hanson:

Q. Yes, go on? Is there more you want to say?

A. Yes, there is.

Q. Yes, go on?

A. I think I'll run through the sequence of events.

Q. Yes, I'll just let you talk until you finish?

A. Mike Kaiser, as I've just said, told me that we needed to put numbers on. I expressed concerns to him on a number of fronts. One was I asked him when, by when. He said, 'Look, we've got to get them done within the week. It's very urgent. We've got to get them done because we've got negotiations shortly with the Old Guard and we've got to be in a strong position.' And I also said to him, I said, 'Are you' — I said — I said, 'Is this really necessary given all the stuff that, you know, happened during the 1993 plebiscite and all the fracas and stuff?' He said, 'Look, just get the numbers on then we can worry about those things later. I left the room and went down the corridor. I was pretty concerned about my time and availability to do this and given that my preoccupation was with regards to the impending Australian Workers Union ballot. I went down the corridor and I said to Lee Bermingham in his office, I said, 'Look,' I said, 'It's not much time to do all of this stuff, you know, what — I've got this mail out to get done for the AWU, I'm just not sure that it can be done,' and he said, 'Look, give Joe a call,' that's Joe Felice, 'because Joe's already been on the case.'

Q. Yes?

A. And so I left Party Office and went back home. I contacted Joe on the phone and went through the conversation with him, the two conversations that I'd had and I said, 'Look, can you, you know, I understand that you're already helping out getting stuff organised here on this front. I've been asked to put people on. I don't really have time, as you know, we've got the AWU ballot. Can you come over and we'll organise things and then you can go ahead and fix it up.' Joe asked me the question, he said, 'How many people?' and I said, 'I don't know, as many as possible.' He then said to me, 'Well, where will we put them?' and I said, 'I don't know,' I said, 'but come over and in the meantime I'll try and figure something out'. I terminated the conversation with him and there was an — obviously an issue there in terms of where people would be enrolled. I had very little idea myself given that I knew very few people who lived in the area. I phoned Lee again at Party Office and explained to him my concerns as to where people should go and asked him for some guidance. During the course of the discussion with him he suggested that I contact two people, one Paul Martyn, the secretary of one of the branches, one of the larger branches in the area who was also a member of the AWU, and Gary Fenlon who essentially knew the membership in the area, so I'm told, off like the back of his hand, and he was also in the faction.

Q. We're talking East Brisbane?

A. East Brisbane.

Q. Yes, go on?

A. So I hung up. I phoned up Gary Fenlon and I went through the issues again with him. He was already aware of the plebiscite from what I could gather and I told him that I was calling him because I was told he might be able to provide some addresses at which people could be enrolled for the purposes of upping the ante. Gary was a little reluctant at the time to be seen to be too publicly supportive of the AWU campaign because the word was that a friend of his, Dennis Mullins, was going to be running as the Old Guard candidate and I think he felt quite caught between a rock and a hard place and he didn't want to be seen too much to be backing one and not the other. In any event he said, 'Look, I'll see what I can do.' He called me up later that day, about half an hour later, with a number of addresses and he said, 'Look, these addresses will be fine. The branch members are okay,' and — and I said to him, I said, 'Are you sure?' and he said, 'Yeah, yeah, yeah. Look, they're fine, I've spoken to them, they've done this sort of stuff before, they will be fine. Here are the addresses.'

Q. This is on the phone?

A. This is on the phone.

Q. Yes, go on?

A. Joe then came over and——

Q. Joe Felice?

A. Joe Felice then came over. He had a whole lot of electoral forms with him and we sat down and we just sort of started thinking of names off the top of our head that we would follow up and as we did that——

Q. Names of Party members?

A. Names of Party members, and Young Labor members mainly.

Q. Yes, go on?

A. Young Labor was really the group of people who were — that we knew, so——

Q. Amenable to this sort of thing?

A. Well, we were the ones in 1993 who were actively involved, that's right, sir.

Q. Yes, go on?

A. So — I can't remember all the names and I can't even remember how many but know that we went through and thought of a range of names. We filled out forms. I then said to him, I said, 'Look, I've got to go and sort out and get on top of this mail out for the AWU. Can you chase all of them up now and let me know once they've been lodged?'

Q. All right?

A. The following week he called me and told me that they'd been lodged. I then called Kaiser and advised him 'cause I knew that they were interested. I also told Lee that——

Q. Lee?

A. Bermingham.

Q. Yes?

A. That the numbers had been put on as requested and — and told them how many because they needed to know that for the purposes of negotiating the Old Guard to pull out and to force their hand in the area. As I understand it I didn't attend any of those negotiation meetings, but the Old Guard subsequently pulled out the candidate.

In an interview with officers of the CJC (a summary of which is Exhibit 401CC), Paul Thomas Martyn, who was the President of the Greenslopes ALP branch, denied ever being contacted by Powell and said he knew of no activity by Fenlon concerning fraudulent false enrolments.

It is clear from the evidence of Powell that he was saying that Fenlon had supplied him with a number of addresses which could be used as 'safe houses' for false enrolments

after Kaiser had told him he wanted 'numbers put on urgently'. It is also clear from this evidence that Bermingham and Felice were said to be involved — Felice and Powell filling out the enrolment forms and Felice being asked to have them signed by the applicants.

### The evidence of Lee Bermingham concerning false enrolments

Bermingham said when he gave evidence in the public hearing on 4 December 2000 that there were false enrolments in 1996 for East Brisbane. The following evidence was then given (T2530):

Mr Hanson:

Q. And who decided that there would be?

A. I'm not entirely sure of the process that led to the false enrolments in '96. One of the things that did occur was that Kaiser didn't want me to be too involved once it was decided that my sister would be a candidate and other than having a discussion with Joe Felice and asking him to return the people from Townsville, my involvement in that — that was about the extent of it by and large. Oh, I did play a role in getting Mullins to withdraw. I was part of the negotiating committee. Myself, Mike Kaiser negotiated with the old guard, Di Farmer and Sharon Humphries, to try and persuade them to pull Mullins. That was by and large my strategy for winning that plebiscite and I was successful in getting Mullins pulled.

Q. All right. Now, was Robyn Twell's decision not to recontest publicised immediately she announced it?

A. No, it wasn't, no.

Q. Was it held back?

A. It was held back and it was held back because when Mike first told me that, you know, she — you know, when we worked out she was going and that he would have to call a plebiscite I said 'We'll probably need a few days to get people on because I don't — for those reasons I've just outlined I don't think we could win a plebiscite if Mullins was in the field.'

Q. This is you talking to Kaiser, is it?

A. Me talking to Kaiser, yes.

Q. Yes. So what does that have to do with holding back the announcement?

A. In order to move people into the electorate.

Q. And you told Mr Kaiser that, did you?

A. Yes, yes.

Q. And was — all right. So her non-contesting the next election was indeed held back, was it?

A. It was held back for a few days to enable people to be put on the rolls.

Q. And did you do any of that yourself?

A. As I said, I did ask Joe Felice to bring back the people from Townsville.

Later in his evidence on 4 December 2000 Bermingham was questioned concerning the possible involvement of Fenlon (T2539):

Mr Hanson:

Q. Can you comment on Mr Fenlon's knowledge of addresses in the East Brisbane electorate?

Chairman:

Q. When, 1996?

Mr Hanson:

Q. 1996?

A. 1996. Well, I — as I said earlier, I know that Gary Fenlon was quite central to any



chances that the AWU candidate would have because he controlled a large number of the numbers in that area and, as I said, there was a difficulty earlier because he had done his recruiting and so on with Dennis Mullins and it was hard to distinguish whose numbers were whose and so, yes, I know that he would have had a great deal of knowledge of the addresses. What those addresses are I don't know.

Q. Have you read the transcript with Mr Powell's evidence?

A. Yes, I have.

Q. Did you see what he had to say about contacting Fenlon?

A. Yeah.

Q. And getting some addresses for safe houses?

A. Yeah.

Q. Have you got anything to add to what he told us about that?

A. No, I think that's probably — I think — I — I think his information would be correct.

Q. Well, what information do you mean?

A. That is that he — that he contacted me and I suggested he ring Gary Fenlon and Gary Fenlon arranged addresses for him and Joe Felice is roughly how I remember it and I roughly remember that being the case because I do remember suggesting that they contact Gary. I was quite conscious of the fact that Gary was a difficulty in that plebiscite if my sister was going to succeed. I arranged for my sister to go and meet him so that she could try and persuade him to see her as a worthwhile candidate because I knew he was quite a close friend of Dennis Mullins as well as — even though they were in different factions because of the faction alliance they had built their numbers together and had put him in a difficult situation. If Warwick needed addresses and if Joe needed addresses they would have to get them through Gary Fenlon.

Q. I think [in] Powell's evidence he was told or asked to get some numbers into East Brisbane in 1996?

A. Yeah.

Q. You'd dropped out of it——?

A. I was——

Q. ——or was it——?

A. I was around the edges, yes.

Q. So why did you suggest that he contact Gary Fenlon for the purposes of getting addresses?

A. Because he was the AWU numbers person in that area.

Q. And addresses for what purpose?

A. For false enrolments.

Q. How would he know?

A. How would he know that?

Q. Yes, how would he know an address that would be appropriate for that sort of exercise?

A. Because he knew the membership, I guess, and he had his own numbers there so it would be quite easy for him to know which addresses to use.

I should note that when Bermingham had earlier given evidence in-camera he gave no evidence that implicated Fenlon in any impropriety in the plebiscite.

It was clear from this evidence that Bermingham acknowledged involvement and that he too was implicating Kaiser and indirectly Fenlon in false enrolments in the 1996 East Brisbane plebiscite.

## **The evidence of Joseph Felice concerning false enrolments**

Felice stated that he could not recall specific conversations with Powell concerning any false enrolments, but did recall going to the East Brisbane post office and obtaining some electoral enrolment forms. He said that he had no recollection of sitting down with Powell and filling out the enrolment forms for signing by the applicants, but acknowledged that that may have taken place. He also said he had no recollection of being given the filled out false enrolment forms and being asked by Powell to have the applicants sign them, but once again did not deny that this had occurred. However, he did acknowledge a recollection of involvement in at least four consensual false enrolments.

He said that he had no personal knowledge of any involvement of Kaiser in any false enrolments. However, he had some 'vague recollection' that he had been told, possibly by Powell, that Fenlon was reluctant to assist by providing names and addresses because Dennis Mullins was a friend of his and had run Fenlon's campaign in the 1995 State Election.

## **The response of Gary Fenlon**

In summary, both Powell and Bermingham say that Fenlon was involved in the false enrolments in the 1996 East Brisbane plebiscite. Powell said Fenlon supplied him with a number of addresses which could be used as 'safe houses' for false enrolments. Bermingham said that Fenlon would know which addresses would be appropriate to be used and for that reason he suggested that Powell contact Fenlon. Neither Powell nor Bermingham makes any suggestion that Fenlon was a party to any forged enrolments.

Fenlon denies any involvement in the plebiscite as alleged by Powell and Bermingham.

Fenlon's Counsel, Mr Davis, has furnished quite detailed submissions. He seeks from me 'a positive finding that the evidence of Powell and Bermingham as against Fenlon is totally uncreditworthy'.

As earlier stated, it is not my role to make findings. It is obvious that the evidence of Powell and Bermingham as to Fenlon's involvement in false enrolments conflicts with Fenlon's denial of such involvement. However, if Fenlon were to have been tried on charges arising out of the alleged false enrolments the disputed matters of fact would have been resolved by the jury. Because of the time bar the matters in dispute can never be resolved. Nevertheless, I record that in his submissions Mr Davis has attacked the credibility of Powell and Bermingham pointing out that on their own admissions to the Inquiry each is guilty of electoral fraud, i.e. bringing about false enrolments on the electoral rolls, that each are accomplices with each other and, on the evidence, at least Powell is an accomplice of Fenlon.

Mr Davis refers to what is a rule of practice at a trial where the trial judge may well warn the jury of dangers in acting on the evidence of an accomplice and particularly where that accomplice, Powell, is not corroborated in what he says as to Fenlon's involvement in false enrolments in the 1996 East Brisbane ward.

The matters Mr Davis raise can never be resolved.

## **The response of Michael Kaiser**

In summary, Bermingham and Powell implicate Kaiser in falsification of the electoral roll for the East Brisbane 1996 plebiscite. According to Bermingham, he asked Kaiser to hold off calling a plebiscite straightaway because they would probably need a few days 'to get people on' as he did not believe the plebiscite could be won by the AWU. Powell said Kaiser told him he wanted 'numbers put on' urgently.

In evidence to the Inquiry Kaiser responded to the allegations by denying any improper involvement in the East Brisbane 1996 plebiscite.

In the earlier quoted transcript Powell said he returned to Australia on 13 November 1996 and, 'on the morning of Friday of that week' he went to the ALP office and caught up with Bermingham and Kaiser. Kaiser said there was going to be a plebiscite for East Brisbane and, 'they were aware Robyn Twell was not intending on recontesting'.

I have checked a 1996 diary and found that 13 November was a Wednesday — thus the 'Friday of that week' would have been 15 November. Kaiser denied any of the conversations alleged by Powell in the above transcript T2398. He denied having known Twell's intentions before she resigned saying:

I received a letter from Robyn Twell dated 18 November informing me she had resigned. (T2397)

Mr MacSporran, Counsel for Kaiser, has made detailed submissions to the effect that Powell and Bermingham fabricated allegations that Kaiser knew before 18 November of Twell's retirement and that Kaiser was involved on and from 15 November in putting numbers on — involved, in effect, in electoral fraud. The question 'when did Kaiser first know of Twell's retirement' can never be answered — there will be no forum to resolve the differences between Kaiser and Powell.

Also relevant to Kaiser's response is the evidence of Antony Reeves and Anthony Craig Van de Meer who supported the candidate Uzelin. They gave evidence before me of a meeting said to have taken place on 12 December 1996 in Kaiser's office where they, on behalf of the Left faction, complained about the state of the plebiscite list. They spoke of a further meeting next day. Powell appears to have been present at this meeting on 13 December 1996, but he regarded himself as an onlooker and there by invitation only, although there is evidence that he had been asked by Kaiser to attend and had spoken to Kaiser before the meeting.

Exhibit 189 is an aide memoire prepared by Reeves shortly after these meetings. He records having presented Kaiser with a list of 'written names of 26 people' who appeared on the East Brisbane plebiscite list against whom objections were made. He recorded that they went through the list name by name indicating to Kaiser that they were either not on the electoral roll in the area, not on the roll at all or were part of a stackhouse. Kaiser said he would take the list to 'the other side' (meaning the AWU faction) and seek a settlement of the claims. Exhibit 189 also records that Kaiser said at this second meeting, 'we had advance warning of Twell's withdrawal, so our boys went around to get people on the list' and that he conceded that 22 of the names on the list submitted on the previous day had been incorrectly placed there and 'they won't be voting'.

Kaiser told me that before the meeting Powell had conceded that a number of people on the list were not eligible to vote because they weren't properly enrolled in the area and 'were enrolled at a place they didn't live at' (T2402).

Kaiser did not agree with the words attributed to him by Reeves, but acknowledged that he may have said that someone had advance warning of Twell's resignation and that they had gone around to get people on the list. In evidence before me Kaiser said:

Anything I said at that meeting [13 December 1996] was on the information provided to me by Warwick Powell. (T2404)

It is fair to point out that on 10 January 2001, in evidence to this Inquiry, Kaiser admitted his involvement in a false enrolment in 1986 in the South Brisbane plebiscite and that admission may be regarded in a general sense as supporting or tending to support the claims made against him by Bermingham and Powell as to his 1996 conduct.

Counsel for Kaiser makes detailed submissions as to why Bermingham and Powell should be disbelieved. For the reasons already expressed I do not see that my role includes making such findings. These matters would be for comment before a tribunal of fact.

There is no evidence that Kaiser was a party to any forgery concerning the 1996 East Brisbane plebiscite. In any case, because of the statutory time bar, any offence in

which Kaiser may have been involved in the 1996 East Brisbane plebiscite can no longer be prosecuted. In these circumstances the matters in dispute can never be resolved.

### **Possible forgeries**

The evidence led at the Inquiry suggests that, as a result of the efforts of both factions, applications for false enrolments at addresses within the East Brisbane ward were lodged with the Australian Electoral Commission in the names of at least 30 people. Non-publication orders were made for the names of many of these people, but the following persons who were falsely enrolled are not subject to such an order:

Susan Gaye Burns (Exhibit 203)  
Danielle Bermingham (Martin) (Exhibit 204)  
Ursula Jane Lunney (Exhibit 206)  
Joseph Seconto Felice (Exhibit 59)  
Jamie Malcolm Lonsdale (Exhibit 65)  
Peter Michael Aicher (Exhibit 91)  
Lynda Kay Fraser (Exhibit 85)  
Sean David Black (also known as Sean David Wheelehen) (Exhibit 93)  
Michael Andrew Riley (Exhibit 77)  
Rodney Jeffrey Kenneth Mugford (Exhibit 52)  
Jenny Lynas (Exhibit 161)  
Tara Virginia Waters (Exhibit 207)  
Pamela Nancy Hirning (Exhibit 63)  
Amanda Lee Hirning (Exhibit 79)

As previously stated, there can be no prosecution under the CE Act for a consensual false enrolment because of the statutory time bar. However, if in any case forgery can be proved, then there can be a prosecution. The evidence given to the Inquiry suggests that only the following enrolment applications may have been completed without the knowledge or tacit approval of the applicant and therefore were, possibly, forgeries:

- Danielle Catherine Bermingham (Martin) (Exhibit 204)
- Ursula Jane Lunney (Exhibit 206)
- applications for two persons to enrol at 63 Sinclair Street, Kangaroo Point (Exhibits 196 and 199)
- Tara Virginia Waters (Exhibit 207)

I shall deal with each of these in turn.

#### **Application in the name of Danielle Catherine Bermingham (Martin)**

Danielle Martin denied that it was her writing or signature on Exhibit 204, an electoral enrolment form dated 18 November 1996 for the address 46 Gresham Street, East Brisbane. She said she did not know the address. Exhibit 204 shows the witness purports to be the applicant's father, Lee Bermingham. He admitted in evidence that the signature of the witness is his (T2606). That admission, made under compulsion and after he had claimed privilege, is inadmissible in any criminal proceeding against him.

Putting that admission to one side, there remains the fact that his name appears on the form as a witness. In my view, that fact falls well short of evidence to prove that it was he who perpetrated the forgery of his daughter's signature.

The use of a comparison between the forged writing on Exhibit 204 and genuine handwriting of Bermingham or, for example, Powell must be of limited assistance. This is because the original application to enrol has been destroyed (like the others referred to in this part of the report) and Exhibit 204 is a rather poor quality copy taken from microfiche of the original application.

In any event, Exhibit 200 shows (among other things) that Exhibit 204 was one of a batch of 13 electoral enrolment applications lodged with the Australian Electoral Commission on 19 November 1996. If Lee Bermingham were charged with forgery in respect of Exhibit 204, the Crown would bear the onus of proving beyond reasonable doubt that it was he who forged the document. The Crown bears the onus of excluding all hypotheses reasonably consistent with innocence.

Any person involved in the exercise of lodging the batch of 13 forms could have been responsible for the forgery of Exhibit 204. Warwick Powell is one such person and he admits to filling out part of the enrolment application, but denies that he signed the applicant's signature. I bear in mind evidence of Sean Rohrlach that he did see Powell practising copying signatures although Powell denies that allegation. Felice, another possibility, also denies that any writing on Exhibit 204 is his.

#### **Application in the name of Ursula Jane Lunney**

In this person's case, Exhibit 206 is an application for enrolment at 46 Gresham Street, East Brisbane, in the name of Ursula Jane Lunney. Ursula Lunney gave evidence that she neither completed, signed nor authorised the completion of the form. Indeed, she noted that her name was incorrectly spelt at item one of the form. The name of Ronald Noel Hill appears as witness on Exhibit 206. He is the husband of Catherine Bermingham and has been married to her for about 10 years. He denies that any of his writing appears on Exhibit 206. Lee Bermingham, Powell and Felice denied being responsible for any forgery involved with this enrolment, although Powell acknowledged that he may have completed some of the details on the form. This enrolment was one of the 13 forms lodged with the Australian Electoral Commission on 19 November 1996.

Effectively, while there is evidence that Exhibit 206 contains forgeries of Lunney's signature and Hill's signature, it is quite impossible to identify let alone prove beyond reasonable doubt who would have been responsible for any forgeries.

#### **Applications for two persons to enrol at 63 Sinclair Street, Kangaroo Point**

Each of these two enrolment applications is dated 18 November 1996 — one made by a man and the other by a woman (Exhibits 196 and 199) (these names are subject of non-publication orders). The man's application purports to be witnessed by Kevin Court. The male applicant when interviewed by the CJC said he never resided at 63 Sinclair Street and does not know any persons who may have resided there; that none of the writing or signature on that form is his and that he knew Court and says that Court definitely did not witness the form. The address 63 Sinclair Street was used by those acting on behalf of the AWU faction. Court denied that he witnessed the form.

The woman's application purports to be witnessed by the male applicant. In her statement to the CJC the female applicant says that she has never resided at 63 Sinclair Street, does not know any person who may have resided there and she does not even know where Sinclair Street is. She also said she knew Court, but had no knowledge of his witnessing any forms for the male applicant. The female applicant's given name is misspelt on her application.

Although the matter is not specifically commented on by the male applicant, it appears that his name in block letters as witness on the female's application to enrol and his apparent signature as witness are both forgeries.

Lee Bermingham and Powell denied any involvement in any forgery concerning these enrolment forms, although Powell acknowledged that he had filled out the form for the man to sign. He said he gave it to Felice to have it signed. Felice said his writing is not on the enrolment application and could not recall whether he had the enrolment forms to lodge with the Australian Electoral Commission. This took place on 19 November 1996. The man's application is one of the batch of 13 to which I have already referred.

Again, in respect of each of these two enrolment applications, it is quite impossible to determine who was responsible for any forgeries.

### **Application in the name of Tara Virginia Waters**

This enrolment application (Exhibit 207) is in the name of Tara Virginia Waters for an address, 20 Church Avenue, Woolloongabba (Woolloongabba is misspelt). It purports to be signed by her and dated 18 November 1996. The name of the witness appearing on the form is a Jason Zervoudakis of 20 Church Avenue, 'Gabba'. Zervoudakis could not be located by officers of the CJC.

When Waters gave evidence on 30 November 2000, she said she neither signed nor authorised the application (T2378–9). However, on 6 December 2000 she returned to the witness box (T2776). The evidence she then gave cast some doubt on the correctness of her earlier statement because a subsequent electoral form (Exhibit 320) in her name dated 16 April 1997, lodged with the Australian Electoral Commission on 21 April 1997, which she admitted signing, showed as her previous address, 20 Church Avenue, which is the address on Exhibit 207. Waters then said she could not explain how she got the 20 Church Avenue address, but suggested that Catherine Bermingham may have given it to her. Exhibit 320 showed the address at which Waters sought to be enrolled was 104 Fernberg Road, Rosalie — in evidence, Waters described this as a quasi permanent address.

On 12 January 2001, Waters once again returned to the witness box. On this occasion she explained how she came to have the address of 20 Church Avenue inserted in her enrolment application (Exhibit 320) as her previous address. She told me that on 15 March 1997 when she was living at Rosalie she went to a polling booth at Milton to vote at the 1997 Local Government Elections. This booth was near her residence and she did this because she believed she was still enrolled at an address at Bardon which entitled her to vote at the Milton booth. She said that her best recollection was that at the Milton polling booth she expected to find she was enrolled at the Bardon address but was told that she was enrolled at 20 Church Avenue. She said that while at the polling booth she recalled an earlier discussion she had had with Catherine Bermingham about moving addresses for the East Brisbane plebiscite.

According to Waters, Catherine Bermingham had told her that they would have to move her address from Catherine Bermingham's address (12 Prince Street, Annerley) because people from the ALP were ringing her but could not locate her. Waters said she believed this discussion had related to moving her address only on ALP records, but she realised on election day in 1997 that it must have been relevant to changing her electoral enrolment. Exhibit 318 is a copy of Waters's application for membership of the ALP. It is dated 3 April 1996 and shows her residential address as 12 Prince Street Annerley — Catherine Bermingham's residence. Waters was adamant that she had no knowledge she was authorising a change of electoral enrolment. Catherine Bermingham denied any such conversation with Waters about moving her address (T3145).

Waters told me that although she was living in Rosalie she did vote for Catherine Bermingham in the 1996 East Brisbane plebiscite (T2379). She said she received the ballot paper from Catherine Bermingham's husband, Ronald Hill, after Catherine Bermingham had arranged with her for that to occur (T2381–2). Catherine Bermingham denies this claim (T2808). Her husband similarly denies the claim. Waters when last giving evidence maintained (T3124) that she did receive the ballot paper from Catherine Bermingham via Ronald Hill and that she did vote.

Powell in his evidence said that he had spoken to Waters about the false enrolment application at 20 Church Avenue and Waters had said, 'yes, not a problem'. He could not recall whether she authorised him to sign the enrolment application (T2270).

Consequently, at the end of the day, the evidence of a forgery in respect of Exhibit 207 is inconclusive. With Waters's final evidence being that she may have authorised a change of address, albeit for the purposes of ALP records only, the Crown could never prove beyond a reasonable doubt that the person who signed her enrolment form (whomever that may be) did not honestly and reasonably believe that they had authority to do so.

At this time I should discuss a possible perjury charge against Waters.

As can be seen from the above, this witness was summoned to give evidence and first gave evidence from the witness box on 30 November 2000. She was recalled on 6 December 2000 to give further evidence. Shortly after that date, solicitors acting for her advised the CJC that the evidence which Waters had so far given had included false assertions. Her solicitors said that she wished to correct the record. So on 12 January 2001 she gave evidence for a third time for the specific purpose of allowing her to correct the record. On that day Waters told the Inquiry the reasons she had not told the truth originally were:

- (i) she was fearful of being implicated in any kind of electoral fraud when all she believed she had done was have her address used for ALP membership purposes
- (ii) she was fearful about her integrity being questioned before the CJC
- (iii) on the day she returned from her honeymoon she received the summons for her first appearance and was then fearful that the matters about which she was to be questioned would adversely affect the lives of her new husband and her.

She also told me she could not live with herself having made false assertions to the Inquiry. On 12 January 2001 she answered questions from her own solicitor with the view to correcting her earlier account of events.

Counsel Assisting have submitted that, in the circumstances of Waters's case and where she came forward of her own volition and in a timely fashion and not in response to later evidence adverse to her, a report should not be forwarded to the Queensland Director of Public Prosecutions in relation to a possible charge of perjury.

I might add that I have also read the written submissions from Gilshenan and Luton Lawyers, solicitors acting for Waters, and these solicitors have, not unnaturally, supported the submissions of Counsel Assisting.

I agree with the submissions of Counsel Assisting. In coming to this decision I am mindful that the purpose of inquiries such as this is to ascertain the truth. It would be a clear disincentive for any person who wishes to voluntarily correct the record after having given evidence to recommend that that person be charged with perjury.

Accordingly, I shall not recommend that the CJC refer to the Queensland Director of Public Prosecutions any report concerning a possible charge against Waters of perjury.

## **The role of Catherine Bermingham**

It is necessary to make further reference to the evidence of Catherine Bermingham.

As already indicated, in her visits to the witness box, she denied all knowledge of false enrolments even those that were done for her benefit. She maintained her denials, although the evidence showed that eight members of the ALP had their addresses for membership purposes at her home at 12 Prince Street, Annerley — and some of their fees had been paid by her — and although five of them were falsely enrolled for her benefit (T2828) and (T2831).

On 29 November 2000 when Catherine Bermingham gave evidence for the first time, she acknowledged that if she had seen a plebiscite list containing the names of these persons enrolled at her home and including the name of her son Damien Lunney, she would have known that they should not have been there (T2830). She insisted that her address at 12 Prince Street was beyond the boundaries of the East Brisbane ward at least for the 1996 East Brisbane plebiscite.

Further, in her first visit to the witness box Catherine Bermingham said that she was not sure whether she saw either a plebiscite list or a branch member list (T2282). She added it was probably a 'MEC list' or a plebiscite list and later in her evidence (on the first occasion in which she gave evidence) she said she had received a plebiscite list which was used for contacting people (T2289). Unfortunately, while she was in the witness box on this first occasion no plebiscite list was available to show her.

By the time she gave evidence on 12 January 2001 a plebiscite list had been located

containing the name of her son Damien Lunney at an address at 46 Gresham Street, East Brisbane (Exhibit 353). She acknowledged that he did not live at this address (T3147). She said that she had never seen the plebiscite list or any other list with her son's name on it, but had been given a branch list by Robyn Twell which did not have her son's name appearing on it.

Damien Lunney when he gave oral evidence said he did live at 46 Gresham Street, East Brisbane (T385). Furthermore, he acknowledged that the signature on the enrolment application for 46 Gresham Street was his (Exhibit 39). He further said that his mother witnessed the form, but when she entered the witness box she said that her signature was a forgery. Exhibit 39 was one of the batch of 13 enrolment applications lodged with the Australian Electoral Commission on 19 November 1996 (see Exhibit 200). It must be said that the Inquiry had other documents that bore the signature of Catherine Bermingham. Her signature on these other documents does not look at all like the signature of Catherine Bermingham, the witness to Exhibit 39. Apart from that, it is quite impossible to determine who was responsible for her purported signature on Exhibit 39.

In conclusion, if Catherine Bermingham had been a party to any consensual false enrolments, then for reasons already given she cannot now be prosecuted.

## **Conclusion**

There is significant evidence that there were a large number of false enrolments for the purpose of inflating numbers for the relevant factions for the 1996 plebiscite for the Brisbane City Council ward of East Brisbane. A majority of these were consensual. On their own admissions, at least Powell, Bermingham, Mullins and Felice played a major role in the consensual false enrolments. However, for reasons expressed earlier in the report time has long since expired for prosecuting these people and anyone who assisted them for their part in any false enrolments other than forgeries.

In relation to those false enrolments, which the evidence suggests were completed without the knowledge or tacit approval of the applicant, there is insufficient evidence to establish who was responsible for any forgeries.

It is interesting to note that the evidence relating to this plebiscite suggests that the practice of enrolling people at addresses at which they did not live for the purposes of a plebiscite extended beyond any particular faction.

## **C. POSSIBLE PLEBISCITES IN THE STATE ELECTORATE OF REDLANDS**

### **Background**

The CJC received information that the sons of Joan Budd who were the stepsons of her husband, John Budd, had been falsely enrolled in the state electorate of Redlands. John Budd was the Member for the state electorate of Redlands from 1992 to 1995. In the 1995 State Election he was defeated.

The CJC obtained the relevant electoral enrolment forms from the Australian Electoral Commission and recalled Budd to the witness box for the purpose, although not the sole purpose, of questioning her about her knowledge of the enrolments which moved her three sons on the electoral roll into the state electorate of Redlands in 1994 and 1995.

### **The evidence of Joan Budd**

Budd was recalled to give evidence on 6 December 2000. She acknowledged that she had three sons named Lee, Stuart and Sean Hipkins whose father was her previous husband. Prior to answering questions concerning electoral enrolments of her three sons, Budd objected to answering questions on the basis of self-incrimination but was directed to answer. Thereafter any answers she gave are not admissible in evidence in



criminal proceedings against her. Budd was shown an electoral enrolment form dated 17 August 1994 in the name of Lee William Joseph Hipkins moving his address from 213 Shore Street, West Cleveland, to 10 Abalone Crescent, Thornlands (Exhibit 311). When asked whether her son had lived at 10 Abalone Crescent in August 1994 she replied that he had not, although he stayed there on weekends. She said that her son Lee lived at the Shore Street address, which was in the state electorate of Cleveland whereas the Abalone Crescent address was located in the electorate of Redlands — her husband's electorate.

Counsel Assisting questioned Joan Budd concerning the enrolment:

Q. All right. What can you tell us about this manoeuvre or this transaction? Was it for the purpose of your son voting for your husband, John Budd?

A. No, it wasn't.

Q. Well, what is the purpose of this manoeuvre?

A. There was no — no purpose. It didn't give us different votes in internal ballots or anything like that. It was — I never even thought about it like electoral fraud. It — it was just — we was all a family and the boys wanted to work and get involved on John's campaign. It was — I never ever thought we was going to win Redlands by three votes.

Q. Sorry, I can't hear what you're saying. You never thought what?

A. It was never a calculated thing that I ever thought we would win Redlands by three votes or six votes or something like that. It was just because the — the redistribution had left the branches in Redlands extremely small. There was very sort of few — few people to work and the — we were just a family that the boys just wanted to sort of work on — on John's campaigns and that. (T2752–3)

When Budd was asked why her son had to be enrolled in Redlands in order to support her husband in his campaign, she replied that if you were a member of a branch within an electorate your first obligation is regarded as being to the seat in which your branch is located. Budd said her son Lee voted for her husband in the 1995 State Election.

Budd was then shown two further enrolment applications in the names of Sean Bernard Alan Hipkins and Stuart Harold Francis Hipkins, both dated 27 March 1995 and both for the same address of 10 Abalone Crescent, Thornlands (Exhibits 312 and 313). Both electoral enrolment forms are witnessed by Joan Budd. She said that neither of these two sons lived at 10 Abalone Crescent, Thornlands. Joan Budd stated that they also voted for their stepfather in the 1995 State Election and that her husband was aware that all three sons had moved on paper into the electorate of Redlands. In relation to Stuart's electoral enrolment form, his former address was shown on Exhibit 313 as 23 Canterbury Street, Alexandra Hills, which is in the electorate of Capalaba. In the case of Sean's enrolment form it is noted on Exhibit 312 that he had not previously been enrolled. As for Exhibit 312 Joan Budd said in evidence:

It was his first vote. He just wanted to vote for John with his first vote.

I note that the 1995 State Election was held on 15 July, less than two months after the enrolment applications of Stuart and Sean were lodged with the Australian Electoral Commission.

Counsel Assisting asked Joan Budd whether she would describe the exercise of moving her sons into Redlands as 'putting the numbers into Redlands'. She replied that she would not. The following examination then took place:

Q. No?

A. No, it wasn't about that. There was never a preselection in Redlands.

Q. Well, no——?

A. No, but I'm saying there was never a preselection in Redlands itself and the preselections that were held in internal Party ballots that were in Bowman, both Thornlands and Capalaba were both in Bowman so it made absolutely no difference. I can't — I can't say it to you in any other way about the fact. It wasn't to win even the numbers at an election. It was just — it was just a family thing and I never ever

at the time thought of it as electoral fraud. I never ever thought at the time it made us the same as what — as what Lee Bermingham did. I sort of — I just thought this was a family thing that involved a few family members and it wasn't about blackmailing cheats and shuffling them all over Queensland and shuffling them back again. It's just a family thing and I can't — I can't say anything else but that because that's what it was.

Q. But it's worse, isn't it, than moving people falsely in for the purposes of an internal plebiscite. This is a manoeuvre to enable somebody to vote in a real election, isn't it?

A. It wasn't about——

Q. Don't you see it as worse than doing it for the purposes of a plebiscite?

A. I didn't — I didn't then, I never — I always — I always thought that everybody had the right to sort of nominate that they regarded as their place. I didn't think about it like that. I didn't — I never ever thought that three votes would make a difference whether you were in a seat or in an election or anything. They certainly would have never made a difference in any election I was ever involved in. No, I never thought about it.

Q. Well, in 1992, was it, did your husband win comfortably?

A. Yes, he did.

Q. What was the expectation for the 1995 election? Was that going to be a tight contest or did he feel confident?

A. No, well, they put the road through the seat and that, but the Party expectation right until the night before the election was the fact that we — I think they polled Redlands at one time and showed — the only time they polled it showed us as holding our '92 vote. I always thought we'd get slaughtered and we did, but I never, ever thought that two or three votes was going to make a difference.

Q. Now, do you recall when you were here last time you gave some evidence about Ross Musgrove was supposedly asked by Lee Bermingham to put his numbers into Mundingburra. Do you remember that topic?

A. Yes, I do.

Q. And you regarded it as rubbish?

A. That's correct.

Q. And the purpose of the supposed exercise was to have people vote in the Mundingburra by-election was it not, not the Mundingburra plebiscite?

A. That's right, the by-election.

Q. And I think the evidence you gave on that occasion, at page 463, was that you'd never heard of the Party doing anything like this and you dismissed it as absolute rubbish?

A. That's correct, I've never heard of the Party doing anything like that.

Q. But you and your family did exactly that in Redlands, didn't you, with your sons? Isn't that exactly what you did?

A. No, it isn't.

Q. You don't see it that way?

A. No, I'm saying to you the Party never did things like that. The Party didn't send phone calls out asking everybody from all over the place to go — the truth is, Mr Hanson, I've been in the Labor Party for 27 years and in all that time, in everywhere, everybody did the thing over family members.

Q. Everybody did what? Did this thing?

A. Everybody's family members were — it was almost a convention. Nobody ever challenged a member of somebody's family. And it wasn't just in my faction, it was in every faction. And it wasn't just in the Labor Party. It's in the National Party and the Liberal Party and the Independents.

Q. If you can give us some examples we'll chase them up?

A. It's the truth. I mean, you can see them coming out now every day. It's the truth. There were Members of Parliament whose kids grew up and that and left home but they stayed on the roll at their house. That's the truth. And, no, I never regarded it

as the same and I never — and I never believed that was what Bermingham was up to. What they did — the Party have never done that. The Party have never sent out a call. The Party have never discussed the thing over Party members. It was just something.

Chairman:

- Q. Well, do I infer that in your opinion it was quite all right for family to do what you did with your sons but it wasn't all right if the same sort of manoeuvre was executed with persons other than your family?
- A. It wasn't all right to write other people's name or to put pressure on kids who didn't want to do it or to shuffle them around the place. No, I didn't, and I can't say anything other than the fact that at the time I never thought it was — I never thought it was wrong because it was something that I knew went — went on, and no, I did think it was different. But I am ashamed of the fact and that it was my son's first vote and — and I regret that I've — I regret I've dragged them into my problems. (T2760–62)

## Conclusion

There was no evidence to suggest that any of the three enrolments had been forged. For the reasons given earlier in this report any offence committed by any person in relation to these enrolments and any voting in the 1995 State Election is now statute barred and can no longer be prosecuted.

I should add that I consider it to be rather interesting that the conduct involving the Hipkins men, which was for the purpose of enabling someone to vote in an election as opposed to an internal plebiscite, was considered by Budd not to be wrong whereas she condemned the practice of 'shuffling' members all over Queensland and 'shuffling' them back again for the purposes of a plebiscite. Budd had been the General Returning Officer of the ALP for a number of years and as such had regularly decided whose names should appear on a plebiscite list. As General Returning Officer she had ruled on complaints by candidates that certain persons were ineligible to vote because they did not reside in the electorate.

## THE ELDER FAMILY ENROLMENTS

The term of reference relevant to this chapter is:

3A To conduct an investigation into any alleged official misconduct, which constitutes or could constitute a criminal offence or offences, by James Peter Elder in respect of matters affecting the electoral roll.

### BACKGROUND

The Inquiry's original terms of reference were extended when information was received that a number of electoral enrolments relating to the family of James Peter Elder were false. At the time when the terms of reference were extended James Peter Elder was a member of the Legislative Assembly and Deputy Premier.

On the basis of this information, the CJC sought from the Australian Electoral Commission the relevant enrolment forms, some of which purported to have been signed by Elder. In two instances, electoral enrolment forms of relatives of Elder were signed by another elected official, Paul Tully, a councillor of the Ipswich City Council.

### THE EVIDENCE OF JAMES ELDER

Elder gave evidence before me on 30 November 2000. He claimed privilege based on the ground that to answer questions would tend to incriminate him, but was directed to answer the questions. The result is that what Elder said from the witness box is not admissible in evidence against him in criminal proceedings.

Elder stated that he first entered Parliament in 1989 when he won the seat of Manly. Following a redistribution, he became the Member for Capalaba. He said that he was a member of the ALP and was aligned to the AWU faction or 'the AWU Centre faction' as it is called.

Elder explained that he was separated and going through the process of divorce. He said that he had three daughters, five brothers and two sisters and that he was then residing at 111 Howlett Road, Capalaba, having initially moved there in 1995. He explained that for some time he had lived away from the house because of the separation but had been back there for around six months. He said that prior to living at Howlett Road he had resided at 72 Finucane Road, Capalaba, from about 1981 or 1982. He initially said that his brothers and sisters sometimes stayed with him at the two residences for short periods but did not permanently live with him.

Elder acknowledged that he and his wife and his brother, Christopher, and sister, Annette, were enrolled at 111 Howlett Road and had been enrolled at 72 Finucane Road. Counsel Assisting asked whether Christopher and Annette lived at the Finucane Road address and he responded:

My best recollection of that is that they — they were around. Whether they were there when they were enrolled I believe so, but if you're asking me did they permanently live there, no, but I believe they were there when I enrolled them. That's my best recollection of it; it was a fair time ago.

Counsel Assisting then asked whether Christopher and Annette had lived at 111 Howlett Road, to which Elder replied:

Again, that was a time that my mother was — was ill. Annette was with me at that time. Christopher was around at that time. Whether they were there, Mr Hanson, at the time that they enrolled, again, that — that's debatable. I did enrol them there, I mean they'd been with me for 12 years. They'd been living off and on with me for that period of time, but I did enrol them there, yes.

Counsel Assisting then took Elder to a number of specific electoral enrolment forms.

Elder was shown an enrolment form for his brother, Christopher Stuart Elder, for 72 Finucane Road, Capalaba, dated 7 July 1986 (Exhibit 277). When again asked by Counsel Assisting concerning his brother's residency at that address Elder stated that he could not say whether he was living there 'right at the time' but he was to the best of his knowledge. He acknowledged that the longest Christopher had spent at the address was probably a 'couple of months'. Elder confirmed that the records of Christopher's driver's licence indicated that he had advised the authorities in 1984 that he was living at Willow Street, Inala, and next advised 'the licence people' of a change of address to New Farm in 1989. Elder agreed that this would be right as far as he knew of his brother's movements. Elder acknowledged his own signature as witness to the enrolment form (Exhibit 277).

Elder was shown another enrolment form in the name of his brother Christopher. This enrolment form, which was undated but received by the Australian Electoral Commission on 21 June 1995, moved Christopher on the electoral roll from 72 Finucane Road, Capalaba, to 111 Howlett Road, Capalaba (Exhibit 278). When Counsel Assisting asked whether Christopher was living at Howlett Road, Capalaba, in June 1995, Elder replied:

He was around in '95, but I doubt he was there in June, Mr Hanson, I can't recall him being there and I transferred both Annette and Christopher and their enrolments to — to Howlett Road ... I mean, the — as I've said publicly, these are his family, the family have been very close, they've been very supportive and they'd always been with me at Finucane Road and they moved to Howlett Road. He did spend time in — 95 with me. I can't recall him being there at the time I did this Mr Hanson, to the best of my knowledge. (T2321)

When asked what was the longest time that Christopher had spent at 111 Howlett Road, he replied that 'it wouldn't have been any more than — than a month, maybe six weeks'. This enrolment is also witnessed in the name of James Peter Elder.

Elder was then shown an enrolment form in the name of his sister, Annette Eileen Elder, at 72 Finucane Road dated 19 May 1986 (Exhibit 279). In relation to this enrolment Elder stated:

I certainly put them into the branches at that time, but Annette didn't live there for any length of time, no.

Although James Peter Elder's name does not appear on the enrolment form he did say that he would probably have requested that the enrolment be done.

Counsel Assisting then showed him Annette's subsequent enrolment form dated 26 April 1995, moving her on the electoral roll from 72 Finucane Road to 111 Howlett Road (Exhibit 280). Elder stated that Annette had permanently moved up from Victoria in 1995 for about 18 months and as far as he could recall it was at the time that she was enrolled. However, Elder acknowledged that Annette had been living in Victoria off and on over the last decade and had returned there upon his mother's death in February 1996. He confirmed that Annette's driver's licence particulars would indicate that she has been a resident of an address at Caulfield in Victoria from January 1993 to the present. When Counsel Assisting pointed out to Elder that the two enrolments at 111 Howlett Road for Christopher and Annette were lodged with the Australian Electoral Commission on 21 June 1995, Elder responded:

I mean, it was a matter of having — they were enrolled with me, I mean, Mr Hanson, it was just — just a matter of doing it when we did it.

When Elder was told by Counsel Assisting that his own enrolment to 111 Howlett Road occurred in September 1994, he replied:

It might have been prior to an election to make sure they were current. It may've been, I just can't recall.

Counsel Assisting then questioned Elder concerning an enrolment application in the name of his brother Phillip Anthony Elder at 4 Brolga Street, Thornside, dated 27 May 1986 (Exhibit 284). Elder acknowledged that he was a witness to the enrolment. When asked whether this was a genuine enrolment Elder stated:

No, he didn't live at that address at that time. He — as I said, my — my family was a pretty close family, they all wanted to be involved in some form or other with me in the political sphere. They moved but it's not a genuine enrolment. He had an intention of living there, he didn't.

Elder added that his brother may have spent a month or two there over the years but not at that time. Elder stated that the house was owned by his sister Nolyine.

Elder acknowledged that an enrolment application in the name of Lynda Denise Elder, the wife of Phillip, moving her on the electoral roll to 4 Brolga Street and also dated 27 May 1986 was witnessed by him and was not a genuine enrolment (Exhibit 285).

A further enrolment application at the same address in the name of his brother, Michael Alexander Elder, dated 20 January 1991 is Exhibit 286. Elder admitted that he witnessed that enrolment form and that the movement to 4 Brolga Street also was not genuine. Elder further admitted that another enrolment form in the name of his brother, Robert Allan Elder, dated the same day, 20 January 1991, moving him on the electoral roll to 4 Brolga Street, Thornside, disclosed a movement that was not genuine. This enrolment is Exhibit 288 and is witnessed in the name of Jim Elder.

There are two enrolment applications moving Michael and Robert from 4 Brolga Street. They are Exhibits 287 and 289 respectively. They are both dated 18 March 1994 and purport to move each of them on the electoral roll to Gramzow Road, Mt Cotton. They bear consecutive Australian Electoral Commission numbers and both quote Post Office Box 797, Capalaba, which Elder agreed was his postal address. In relation to these enrolments the following exchange between Counsel Assisting and Elder took place:

Q. Why do these forms for your brothers quote your post office box?

A. Oh, essentially when — when they were at — you can understand that — that the family were very supportive. They'd been working with me on campaigns and been part of the Labor movement there for many many years. I moved them across to Gramzow Road. The postal address was for — for them. They — they particularly just wanted at that time to be — to assist and support me. We used my post office box as — as an address for their correspondence, any correspondence that came back to them and then I passed it onto them.

Q. Did either of them go to live at Gramzow Road, Mt Cotton?

A. No, they didn't.

Q. Neither of them?

A. No, they didn't.

Q. What electorate was that in, that address?

A. That would have been in — in the electorate of Redlands. I moved them across to Gramzow Road at that time for I think maybe the conference ballot because essentially it — I mean, my — all of them had been fairly active, as I said, in the branches down there and wanting to play a role with me ever since I've been in — ever since I've been in Parliament, so I suspect it was probably around a conference ballot time. (T2333/4)

Further at page 2335 of the transcript, the following evidence was given concerning the reason for Elder's conduct:

Mr Hanson:

Q. Mr Elder, I heard you say from time to time here this morning that they supported you, your family, they moved with you, I think was one of your expressions?

A. It was, Mr Hanson.

- Q. What do you mean by that? Do you mean by that that your family members cooperated in having their enrolments moved around at your whim?
- A. My family members were very supportive, Mr Hanson. I mean, what — what I've done with family and them being supportive of me and them being aware of it, Mr Hanson's, been — it's been silly, it's foolish, it's been reckless, but the family has been a very close family and been very supportive and, yes, they are aware of it, Mr Hanson.
- Q. Do we take it from what we've been talking about here for the last hour that you have moved the enrolment of family members around the electorate, in and out of the electorate, when they weren't entitled to be so enrolled?
- A. They weren't entitled to be enrolled.
- Q. They weren't?
- A. They weren't entitled to be enrolled there, Mr Hanson.
- Q. All right?
- Some were, some weren't, but——
- Q. What was the purpose of these manoeuvres?
- A. Well essentially, Mr Hanson, it's always been about family. It's been about them wanting to play a role. I mean, it started back in '86 when I first joined the branches and them wanting to be involved, prepared to be involved. They were very active in my campaigns. They've been very active from day one. It's been a close family. As I said, reckless and foolish, but how can I explain it to you, it's family.
- Q. Well, we see from the addresses they gave the driver's licence authorities anyway that they have lived at various addresses while they've been enrolled in your electorate such as Red Hill, Inala, Toowong, in the case of your sister Victoria?
- A. Yes, sir.
- Q. Kangaroo Point, New Farm. Would that be right? Hawthorne?
- A. That would be correct.
- Q. Coorparoo. They've all lived all over the place except where they were enrolled, would that be about right?
- A. That would be right, sir.
- Q. Do you know whether these members ever exercised a vote in the electorates for which you had them enrolled at a state election?
- A. There's every likelihood they would have voted where they were enrolled, sir.
- Q. They would have?
- A. Voted where they were enrolled, sir.

Chairman:

- Q. Well, if you want to vote you've got to vote where you're enrolled?
- A. Yes, Mr Commissioner.
- Q. Putting it bluntly, isn't it?
- A. Yes, Mr Commissioner, that's blunt.

Mr Hanson:

- Q. And would they have exercised a vote for the purposes of State Conferences?
- A. They would have.
- Q. And did you ever have to face a plebiscite?
- A. Only in 1988.
- Q. '88?
- A. 1988.
- Q. '88. And did you utilise any of these false enrolments to boost your numbers for that plebiscite?

A. Well, if the family — well, in '86 when they joined I had no intention of a Parliamentary career.

Q. No intention what — a Parliamentary career?

A. Of a Parliamentary career. I didn't have a view of a Parliamentary career in '86. They joined in '86. Those votes would have been part of a plebiscite that I went through in '88 but that plebiscite that I went through in '88 I was successful to the best of my recollection by about 120 votes to 50. What had happened at that time was at the redistribution, the redistribution of Manly was moved into the Redlands area and moved into the Redlands branches and it was the Redlands branches that were extremely supportive of me at the time. Those votes of my family made very little difference to my preselection, but they would have voted, Mr Hanson, and as I said foolish and reckless but that preselection ballot to the best of my knowledge was fairly comprehensive.

Elder said that apart from the false enrolments to which I have already referred, he was not aware of any others anywhere in the State. He was then asked whether he was aware of any other persons who were engaging in the same practices as he had acknowledged, to which he replied:

I'm not aware of anyone. I'm not proud of what I've done in relation to my family members. It's a very high price, foolish as I said to you earlier and stupid and I'm not proud of it but I'm aware of no others. (T2339)

Elder claimed that nobody taught him how to carry out these manoeuvres.

After further questioning Elder, Counsel Assisting invited him to respond to an article that appeared in the *Courier-Mail* the previous day headed:

Confidential ALP records reveal the mailing addresses of 35 people, including 8 Elder family members were post office boxes controlled by Mr Elder.

Elder confirmed that there were a large number of ALP members who were registered with the ALP at post office boxes controlled by him. He stated, however, that each one of those persons was registered legitimately on the electoral roll. There is no evidence to the contrary.

Elder stated that he knew nothing of two electoral enrolment forms each dated 28 December 1990 for his brother Phillip Anthony Elder and his wife Lynda Denise Elder moving them on the electoral roll to an address in Goodna (Exhibits 292 and 295). However, he stated that they did physically move to Goodna from Red Hill. These two forms which showed Red Hill as the previous address were witnessed by Paul Tully. I now turn to the evidence of Paul Tully concerning these forms.

## THE EVIDENCE OF PAUL TULLY

Tully gave evidence before me on 30 November 2000 telling me he was a full-time councillor on the Ipswich City Council and had held that position since 1995. He said that for the previous 17 years he was a part time councillor with the same council.

After claiming privilege against self-incrimination and being directed to answer, Tully acknowledged that on 28 December 1990 he witnessed enrolment forms for Phillip Anthony Elder and his wife Lynda Denise Elder (Exhibits 292 and 295), which sought to enrol them at a property in Goodna owned by Tully. The former address recorded on the two enrolment forms is 166 Arthur Terrace, Red Hill.

Tully told me that he met Phillip and Lynda through the Goodna Rugby League Club and was aware that they were living in the same state electorate as he, although in a different local council ward. He described a meeting at the Royal Mail Hotel at Goodna where Phillip asked whether they could 'move in for awhile'. Tully told me that his recollection was that it was in the last week of December 1990 — in the Christmas–New Year break that this request was made. Tully said that he and the Elders did not talk about money because he had never sought rent from persons who resided at his premises. He told me that he had assumed they would pay for expenses. When asked whether there was any agreement reached on how long they were going to stay



at his premises, he told me that he could not recall the specifics but assumed it would not have been more than two or three months. Tully went on to say that he could not recall the specific details of the discussion because 10 years had elapsed. He told me that in the course of the discussion at the hotel the two electoral enrolment forms were filled out and left with the Elders to lodge. Tully said he even provided the Elders an envelope for the forms. He explained that he had blank electoral enrolment forms in the hotel as he had enrolled other people on that day and when asked why he had these forms he replied he generally carried blank forms with him 'to be used on the spot when needed'.

Tully acknowledged that the Elders never resided at his premises. He said that they did not turn up as arranged and that 'there was no specific time [for them to take possession] but that date was either the Friday or the Saturday of the last week in December and the arrangements were they would move in over the weekend.' Counsel Assisting then asked whether he saw Phillip or Lynda again and Tully replied that he could not recall seeing them specifically until the next football season; he said that he never found out why they did not turn up and added that he 'didn't particularly care'.

Tully stated that he believed that the Elders were entitled to enrol at the time because they had an immediate right to reside at his premises combined with the fact that they had already resided in the electorate for more than one month. He claimed this entitlement existed even if the person was not enrolled at the former address within that same electorate.

Tully agreed that the reason for the haste in having the two Elders sign the enrolment applications was that they entitled them to vote in his ward. He explained that although the Local Council Election was not until March 1991, the cut-off date for enrolment was 31 December 1990. In the end the Elders' enrolments were not received by the electoral office until the New Year and so they were not entitled to vote in his ward.

Tully stated that there was no plebiscite in his electorate in the period between the date of the enrolments of the two Elders and May 1992, the date when he was informed the enrolments of the two Elders had changed again.

## CONCLUSIONS

There is no evidence to suggest that any of the enrolments relating to the Elder family, including the enrolments of Phillip and Lynda for the Goodna address, was a forgery. As previously stated any prosecutions for offences of signing consensual false enrolments after the joint Commonwealth–State roll came into existence in January 1992 are now time barred. Furthermore, any prosecutions for signing consensual false enrolments for the Queensland roll prior to January 1992 in breach of section 117 of the *Elections Act 1983–1985* are also time barred. Also any prosecutions for signing consensual enrolments for the Queensland roll in breach of section 117 of the Criminal Code of Queensland cannot now be brought. This is because of section 98A of the Criminal Code of Queensland as introduced in 1993, whereby section 117 and other sections in Chapter 14 of the Criminal Code of Queensland no longer have application to an election for the Legislative Assembly or a Local Authority, and also because of section 11 of the Criminal Code of Queensland. Furthermore, for the reasons earlier expressed in this report, I consider that in respect of any enrolments of members of the family of James Peter Elder and possible charges of conspiracy, the CJC in the exercise of its discretion under section 33(2A) of the Criminal Justice Act, should not refer such charge for consideration by the Queensland Director of Public Prosecutions.

Once again, for the reasons stated in the introduction to this report no disciplinary charge of official misconduct is possible.

I should add that, according to Elder's evidence, although the purpose of the enrolments was primarily for internal Party conferences and other ballots, a necessary result of this conduct was that family members would vote at local, state and federal elections in electorates or wards in which they had no lawful entitlement to vote.

## COMMENTS AND GENERAL OBSERVATIONS

Having canvassed the evidence that was adduced in the course of the Inquiry I wish now to pass some comment and make some general observations concerning electoral processes and other matters.

As Mr McMurdo in his advice to the CJC highlighted, the CJC does not have power to investigate electoral fraud *per se*. Accordingly, the terms of reference did not call for an investigation of electoral fraud in general, nor of the electoral process, and did not call for recommendations on electoral reform, either general or specific.

However, in the course of my reading for the purposes of this Inquiry (e.g. in looking at the history of legislation dealing with electoral matters), and considering further material that is in the public domain — e.g. oral submissions by Professor Hughes (a former Commissioner of the Australian Electoral Commission), to the Joint Standing Committee on Electoral Matters (JSCEM) and an interim report from the Legal Constitutional and Administrative Review Committee (LCARC) — I have formed certain views about the legislative scheme for elections and about the application of the Criminal Justice Act to MLAs and local government councillors. I have decided to express them in this chapter in the hope that they may contribute to informed debate about electoral reform and associated matters.

It must be stressed that these remarks are made without receiving any evidence or submissions dealing with the desirability of electoral reform or the form any such reform should take.

I have read criticism of this Inquiry to the effect that it investigated crimes it knew it could not prosecute because they were too old. I shall assume that the critic's use of the word 'crimes' is not intended to refer to a crime as dealt with in the Criminal Code of Queensland, but rather to refer to criminal offences. It is true to say that by reason of the legislation many offences which the evidence suggest may have occurred cannot be prosecuted because they are subject to a statutory time bar. Nevertheless, in my view those matters needed investigation and exposure to the public gaze — not only to inform the public of what apparently occurred but to let the Electoral Commissions (both State and Federal) and the Governments (both State and Federal) know:

- details of the possible official misconduct that constituted a criminal offence
- the extent to which persons may have participated in that conduct, and
- evidence suggesting that a culture apparently approving of such conduct existed in Queensland within a major political party.

It is the State and Federal Governments who hold the power to remedy the problems disclosed and, in my view, they needed to know the types and prevalence of the possible offences and the unlawful conduct that a number of witnesses admitted.

The Inquiry's terms of reference were largely limited to conduct at ALP plebiscites. The ALP rules required that Party members claiming to be eligible to vote at a plebiscite in an electorate be enrolled on the electoral roll for that electorate at certain times. It was because of possible offences — mostly against the *Commonwealth Electoral Act 1918* but some against the *Elections Act 1983–85* — that the possible illegality of the conduct was exposed.

## THE IMPORTANCE OF THE ELECTORAL SYSTEM

In his book *Law and the Electoral Process* (1988), Dr H F Rawlings (then a lecturer in law at University of Bristol) began by discussing 'free elections' and the meaning of that phrase. He referred to six listed conditions to be 'largely or wholly' satisfied before 'a general election could properly be described as "democratic"' (see page 1). He noted two points and in the course of discussing the second point wrote of the 'systematic' element of electoral systems and cited the following passage from *Free Elections* by W J M MacKenzie (1967) to illustrate 'the fact that the various components of electoral systems are closely interrelated':

Any code of electoral law includes a number of essential sections of almost equal importance; these deal with the qualifications and disqualifications of voters, the division of the electorate into constituencies, the prevention of corruption and intimidation during the campaign, the judicial and administrative provisions for seeing that the law is observed. Each of these sections is meaningless in isolation from the others. A very wide and equal suffrage loses its value if political bosses are able to gerrymander constituencies so as to suit their own interests; there is no point in having an elaborate system of proportional representation if the electors are all driven in one direction by a preponderance of bribes and threats; legal provisions mean nothing if enforcement of the law is left wholly in the hands of those who profit by breaking it. This is why it is right to speak of 'the electoral **system**'. Procedure for elections is **systematic** in that its parts are interdependent; it is impossible to advance on one 'front' without regard to the others.

Dr Rawlings then went on to say in a passage which, in the context of the present Inquiry, I regard as important and relevant:

The importance of a system of free elections lies in the fact that it confers initial legitimacy upon those who are selected to exercise governmental authority within the State. This, as MacKenzie notes, is the only consistent answer by the West to the problem of legitimate power ... A measure of the efficacy of any given electoral system is the degree of legitimacy which it confers upon those who have succeeded in the electoral contest. This is not to say that legitimacy derived from the electoral process may not subsequently be lost by a given government's conduct of affairs; but it does mean that an incoming government produced by a free electoral process should begin its administration with the benefit of a generally accepted authority. In this sense the electoral process provides an essential mechanism in maintaining the continuity of the state.

I note also similar sentiments stated in the Fitzgerald Report when it said:

A fundamental tenet of the established system of parliamentary democracy is that public opinion is given effect by regular, free, fair elections following open debate. A government in our political system which achieves office by means other than free and fair elections lacks legitimate political authority over that system. This must affect the ability of Parliament to play its proper role in the way referred to in this report ...

The terms of reference of this Inquiry, which are set out in chapter 1 of this report, relate very largely to conduct that constitutes or could constitute a criminal offence or offences committed in plebiscites in various years. None of the plebiscites could fall within the definition of 'election' in the *Electoral Act 1992*. That Act defined 'election' in this way:

means an election of a member or members of the Legislative Assembly.

Nevertheless, most of the conduct of which I heard evidence, although not relating directly to an election of a Member of the Legislative Assembly (the Mundingburra by-election in early 1996 was one such election) was conduct that might occur in an election of a Member or Members of the Legislative Assembly and in a local government including Brisbane City Council election (and on the basis of admissions made, the evidence suggests did occur in the cases of Brown, O'Mara, Hipkins, Reeh etc.).

Before I go further, I should say:

- (a) Although the *Electoral Act 1992* has defined 'election' as 'means an election of a member or members of the Legislative Assembly', section 17(5) of the *City of Brisbane Act 1924* applies the *Electoral Act 1992* to the conduct of elections

with any necessary changes and any changes prescribed by regulation.

- (b) The *Local Government Act 1993* in Chapter 5 deals with local government elections and has its own separate regime for elections. I note that the Electoral Act and the Local Government Act each detail a number of offences in connection with the conduct of elections.

Effectively, then, the *Electoral Act 1992* does not apply to local government elections (other than the Brisbane City Council elections), but it does apply to Brisbane City Council elections and elections of Members of the Legislative Assembly.

It seems to me that steps should be taken to try to prevent conduct of the type of which I heard affecting not only elections covered by the *Electoral Act 1992* but elections for local government including the Brisbane City Council.

It will be for the Government to decide from whom and how advice should be taken as to what should be done to prevent or at least minimise conduct that might be loosely termed electoral fraud. LCARC's interim report, to which I shall on several occasions refer, shows that since August 2000 LCARC has received submissions concerning the prevention and detection of fraud in enrolment and voting procedures.

Nevertheless, I propose to proffer some suggestions and comments in the hope that what I say may be of some assistance to the Government and those persons from whom advice is sought.

## **WEAKNESSES IN THE PRESENT ELECTORAL SYSTEM EXPOSED AT THE INQUIRY**

I agree with Counsel Assisting that the evidence given to the Inquiry suggested that in respect of matters falling within the terms of reference there were two main types of improper practices, each involving enrolment on the State and/or Commonwealth Electoral Roll.

The first and more serious was where persons were enrolled, without their consent or knowledge, at a particular address at which they did not reside and in an electorate in which they did not reside, to enable a vote in their names to be made at a plebiscite to be conducted in that electorate. In the cases where the evidence suggests that forgery and uttering were committed, it would appear that in most instances the person improperly enrolled was probably later 're-enrolled' or 'moved back' to his or her correct address (once more without their knowledge or consent), after the plebiscite had been completed and prior to any general election. Such conduct has been described by one member of the Queensland Court of Appeal as 'political cheating' (see *The Queen v. Ehrmann* CA 50 2001). The evidence suggests that this type of conduct occurred in a number of plebiscites including the 1986 South Brisbane plebiscite, the 1993 and 1996 East Brisbane plebiscites, and the 1996 Thuringowa and Townsville plebiscites. Unfortunately, in very many cases there was insufficient evidence capable of identifying the forger and utterer.

The second form of improper practice, although less serious, was, the evidence suggests, much more extensive. This occurred where persons knowingly enrolled themselves or permitted themselves to be enrolled at an address at which they did not reside, such address generally being in an electorate in which they did not reside, and with the intent that such enrolment would enable a vote to be cast in their name at a plebiscite to be conducted in that electorate.

Counsel Assisting have submitted that in most of the cases in the second category the person witnessing the enrolment application form knew that the information, particularly as to present and past addresses shown on the enrolment application, was not correct. As I have already said, the evidence suggests that this second form of practice was engaged in principally with the object of increasing the number of persons eligible to vote for a particular candidate at a plebiscite. This was described by some witnesses as 'putting the numbers on'. The consenting voters were also called 'floating voters'. Again, as in the case of the first type of practice, the evidence suggested that in the majority of cases the enrolments on the electoral roll were rectified after the plebiscite had been completed and usually before an election proper was held.

I should add that there was evidence that this second form of practice occurred beyond the plebiscites listed in the terms of reference. It is not clear in every case why the conduct occurred, but in the instance of the state electorate of Archerfield the evidence suggested that it was undertaken for the purposes of a possible forthcoming plebiscite. Of course, it may have been merely for the purpose of gaining numbers for the State Conference.

I heard evidence from various persons, notably Karen Ehrmann, Grant Musgrove, Lee Bermingham and Warwick Powell, to the effect that engaging in this second form of practice was part of a 'culture' within at least some factions of the ALP. Each of the persons I have just mentioned was at the relevant time a member or supporter of the AWU faction. However, such conduct was not the exclusive domain of the AWU faction. It was quite clear from the evidence of Dennis Mullins, who was initially a candidate in the plebiscite for the East Brisbane ward in 1996, that his faction, the Socialist Left, resorted to the same type of conduct in order to counter similar conduct by the AWU faction — in effect, on Mullins's evidence, his faction was 'fighting fire with fire'.

Evidence from Joan Budd focused on her sons' 'moving' on the electoral roll to an electorate in which they did not reside in order to vote for their stepfather who was the ALP candidate in that electorate. Their votes were not cast in a plebiscite but were cast in an election. Budd's evidence suggested that there was some sort of convention, among politicians of all parties to enrol members of their families at the family home, i.e. the residence of the politician, regardless of where the members lived. Whether or not there is such a convention did not appear from other evidence. Her suggestion did not prove a convention, although the evidence of James Elder lends some support to Budd's suggestion. Elder has said that his family was 'pretty close' and 'very supportive'. Budd acknowledged that in her family's case that practice extended to voting at elections and not merely at internal Party plebiscites and conferences. Elder, too, acknowledged this.

### **False identities and 'cemetery voting'**

The Inquiry did not hear any evidence nor did it receive any evidence to suggest that false identities had been created to enable nonexistent persons to apply for enrolment to enable them to vote. Furthermore, I did not hear or receive any evidence to suggest that, at least since 1990, any person had fraudulently voted in an election using the identity of a person who had died before the election — a practice sometimes called 'cemetery voting'. In considering the term of reference concerning the Mundingburra by-election in 1996 the analysis placed before the Inquiry suggested that not a single 'dead' person voted. Counsel Assisting have submitted that the fact that the Registrar of Births, Deaths and Marriages provides computerised information to the Australian Electoral Commission may have had a marked effect in reducing, if not eliminating, any practice of voting in the names of dead persons.

As I have said, there was clear evidence of persons being falsely enrolled at an address who had voted at state or local government elections relying on the false address. The evidence suggests that voting in elections by falsely enrolled persons was not an organised activity. Nevertheless, it did occur. The persons who admitted having done so could not now be prosecuted because of the statutory time limitation imposed on prosecutions for such offences.

It may be thought that because of the evidence given at this Inquiry such conduct was perhaps opportunistic and in any event relatively uncommon. It seems to me that if it was opportunistic it flowed from the fact that the consensual false enrolment had occurred and thereby provided the falsely enrolled voter with the opportunity not only to vote at the plebiscite, but to permit his or her name to remain at the false address so that he or she could later unlawfully vote at a subsequent election. I do not consider that the small numbers of persons who engaged in this practice, as disclosed by the evidence at the Inquiry, should necessarily lead the Australian Electoral Commission or Electoral Commission Queensland to believe that such conduct is relatively uncommon — such conduct is in fact a form of political cheating. These unlawfully cast votes can prove decisive in polls where the margin between winning or losing is small.

## THE ISSUE OF PROOF OF IDENTITY

The evidence to the Inquiry suggested that in the majority of detected cases of false enrolment any requirement that a person when initially enrolling provide more detailed proof of identity would probably have had little impact on the conduct disclosed. This statement is made on the assumption that the vast majority of persons eligible to apply for enrolment on the electoral roll do initially apply to be enrolled at the address at which they lawfully reside. However, this proved not to be so in the case of one of Joan Budd's sons. He applied to enrol at a false address from which he cast his first vote at an election. It appeared that at the point when a change of enrolment was sought, the possibility arose of false details being provided to the Commission. As Counsel Assisting point out, the evidence is overwhelming of persons who had originally been lawfully enrolled at an address at which they resided and later, perhaps some years later, being party to applying to change their enrolment to a false address in another electorate to enable them to vote at a plebiscite in that other electorate.

I agree with the submissions of Counsel Assisting that there are no doubt many arguments for and against introducing a requirement for enhanced proof of identity for initial application for enrolment and subsequent change of enrolment. However, it is not my function to canvass these arguments when there are other bodies who have been given the express task of looking at electoral reform. I have already referred to LCARC, which has the task of considering electoral enrolment and electoral voting reform. I also mention that the JSCEM has a reference 'The Integrity of the Electoral Roll'.

It may be thought that persons entitled to vote and who willingly engage in the second type of unlawful practice should be disenfranchised. This issue is a complex one and it seems to me is one that will require close attention.

Professor Colin Hughes, who made a written submission to the JSCEM, gave oral evidence to that Committee on 14 December 2000. His evidence indicated problems associated with introducing a policy of disenfranchising voters. I will return to some of his evidence shortly.

## THE ISSUE OF PROOF OF RESIDENCY

If the Australian Electoral Commission or Electoral Commission Queensland had enhanced standards as to proof of residency, they would no doubt have reduced the opportunities for people to engage in the practices that were identified at this hearing. However, again there may well be many arguments for and against requirements for enhanced proof of residency, both at the time of original enrolment and at the time of each application to change enrolment. No doubt if enhanced proof of residency were to be considered by the JSCEM, that Committee would need to receive and consider submissions from all parties before making any conclusion about the ultimate effectiveness and overall value of any such change. It appears that LCARC's interim report has already received submissions, but whether they deal with enhanced proof of residency is not clear.

The Australian Electoral Commission has recently enhanced a system of monitoring its electoral rolls. It is understood that from about the beginning of 1999 a system known as continuous roll monitoring has been used by the Australian Electoral Commission, which is the body responsible for maintaining state and federal rolls. I understand this system includes data matching with any information retained by other authorities and data mining of the electoral roll with a view to detecting fraudulent enrolments such as duplications at the one address or an unusually high number of enrolments at the one address. However, this Inquiry is unable to evaluate the effectiveness of such tools and I see it as a task for possibly the JSCEM. I understand LCARC, if it completes its investigation into electoral and voting reform, will be investigating such tools.

## THE ENHANCEMENT OF PLEBISCITE RULES

The evidence has shown that the powers that be in the ALP have over the years become aware of the improper and unlawful conduct of some Party members. Ehrmann, for instance, appears to have taken advantage of post office boxes under her control and used them as members' postal addresses in the ALP records to which the ALP sent voting papers to members. She thereby gained control of the ballots sent to these post office boxes and apparently used them as she saw fit. This was a gross abuse of each member's right to vote. It flew in the face of the ideal of a democratic voting process.

In the 1996 Townsville plebiscite, Joan Budd, as General Returning Officer, forbade ballot papers being sent by the ALP to the voters at post office box addresses. This decree did not solve the problem — instead it seems to have enhanced the value of the 'safe house'. The use of a safe house, to which ballot papers were sent, enabled manipulators such as Ehrmann and Foster to still get their hands on the ballot papers and thereby control the members' votes.

I heard evidence that between 1994 and 1999 the rules of the ALP were amended several times in attempts to address the various problems. Although I have earlier mentioned these matters, Mr Mulholland has summarised these changes as follows and I am happy to adopt what he says:

### 1994

- The eligibility requirements for voting in plebiscites were changed to require that members be on the electoral roll as at the date of opening nominations rather than the date of closing of nominations. (T568/30–55)
- Abolition of the 60 per cent rule. Under that rule, if a person received 60 per cent of the local vote, the electoral college did not meet, and the person was automatically elected as the candidate. (T591/30–40)

### 1997

- The eligibility requirements for voting in plebiscites were further changed to require Party membership of twelve months rather than six months. (T592/10) This meant that the person must have become a registered Party member, and attended his or her first branch meeting at least twelve months prior to the opening of nominations. (T593/55)
- The electoral roll was frozen, for eligibility purposes, as at 31 March. Members were eligible to vote in preselections wherever they were enrolled as at the preceding 31 March irrespective of whether they had subsequently moved. This change was designed to remove any incentive to alter an enrolment to take advantage of where preselections may be occurring. (T592/30)

These amendments seem to have had some beneficial effect, without apparently having solved the problem, at least up until 1997. It is clear that ongoing vigilance is required.

## A CASE FOR SUPERVISION OF PLEBISCITES BY THE ELECTORAL COMMISSION QUEENSLAND

It may be thought that the evidence of Kaiser and Ehrmann concerning factions shows fairly clearly that when it came to matters of policy and choice of office bearers and members of committees, including the Disputes Tribunal, the vote of each person attending may not be independently cast — indeed may not be cast by the person at all. The above evidence was not challenged. If correct, it shows the hold that each faction has over its adherents. Any person entitled to a vote may surrender their ballot paper, unexercised, to those in control of the particular faction; the surrender occurs in the full knowledge that those in the seat of power in the faction will cast the vote in the manner they decide best suits the faction's interests.

In *The Machine — Labor Confronts the Future*, Professor John Wanna writes in chapter 7 'Queensland: Consociational Factionalism or Ignoble Cabal' (pages 130–131):

It [the Labor Party] is also a party that continually professes its organic roots and commitment to democratic practice, yet its leadership appears oligarchic and much of its internal politics is configured in response to the domination of a single, powerful union — the Australian Workers' Union (AWU). And although the Queensland Branch is predominantly Right-of-Centre, it has pursued its own directions in national Labor politics and has remained antagonistic to the powerful NSW Right faction.

In the same chapter (pages 133–137), Professor Wanna further writes:

The organisational structure of the Labor Party has undergone gradual revision over the past two decades, with changes reflecting the various fortunes of the winners and losers, and the main challenges posed to the dominant alliance. The crucial dynamic behind organisational modifications has been a concern to maintain the power of factional leaders while incorporating the commitment and ideas of the many. In the 1990s the organisation, if not more democratic, is at least more open to diversity. As a result of these changes, the Queensland Branch has moved away from an oligarchical 'executive committee' system to a structure of specialist committees, where power is exercised informally through more inclusive factional arrangements ... State Conference is formally the principal governing body of the Party. Prior to 1978 this 'Convention' as it was then named was held only triennially and it 'developed a history of having its decisions ignored' by the Parliamentary Party and the powerful Party Executive (Murphy 1978). Following federal intervention into the Queensland Branch in 1978–80, which proposed major structural changes and began a process of reform, the Conference was made biennial, and the number of participants expanded, initially by around one third, to 221 delegates. Unions were entitled to 60 per cent representation compared to 40 per cent from the branches. The 1978–80 reforms were intended to reduce the power of the Trades Hall unions at Conference and on the party's executive committees. The notoriously powerful Queensland Central Executive (with 96 delegates) and its seven-member 'inner executive' were replaced with larger and more representative committees (a quarterly State Council with 106 delegates, and a new Administrative Committee with 22 members elected directly by Conference). Although these changes could be interpreted as simply an exercise in renaming executive bodies, the broader base and greater inclusiveness were significant modifications.

As a result of further reforms in 1996, the State Council was abolished and State Conference became an annual gathering, with greater responsibility for policy input and overview. The Conference remains, however, premised on a '60:40 rule' preserving the institutional power of key unions in the party's highest body. While preserving this ratio, the number of delegates has risen gradually since 1981. At the June 1997 Conference, 342 delegates were accredited, with many from the unions exercising dual votes; in November 1998 union delegates were allowed up to four votes. Since 1988, [*sic*] branch delegates to Conference have been based on federal electoral boundaries (five delegates from each electorate) rather than on the older State Parliament or locality-based branches. A conference of the Labor Women Organisation (which all women members are entitled to attend) is held just prior to the main Conference.

The Executive and senior officials of the party consist of representatives of the factions. This reflects a classic power-sharing arrangement with each faction exercising the right to certain key positions (see below); there is a powerful but implicit understanding that in the interests of party harmony, the party ought to avoid a relapse to a winner-takes-all system. Factions divide senior party positions amongst themselves (considered as their entitlements), and once particular factions nominate their preferred candidates, then these usually receive overwhelming cross-factional support. This ensures the factional balance is maintained. Occasional mavericks may challenge such prearranged procedures, but they do not receive much institutional backing from even their closest supporters. Nevertheless, such a power-sharing system does not entirely prevent power-plays for particular positions, or rule out attempts to unseat an unpopular or controversial candidate ... The current office holders of the party indicate the dominant influence of the AWU.

The above extracts from Professor Wanna's comments concerning factions and power sharing — combined with the comments of Ehrmann that the factions control the Electoral College and the evidence of Kaiser that he cannot recall an occasion when the Electoral College has not voted on factional lines — suggest that, if those



comments are true, when the time comes to preselect a candidate for an electorate it may be that it is the Electoral College that has the real and final say.

There was evidence at the Inquiry that the actions of adherents of some of the factions, e.g. Ehrmann (AWU faction), Dennis Mullins (Labor Unity faction), Warwick Powell (AWU faction) and Lee Bermingham (AWU faction), may have subverted the electoral process in so far as, because of their actions, votes were cast or may have been cast in plebiscites by persons who were not entitled to cast a vote. Their conduct disclosed a lack of transparency.

After 1994 when the 60 per cent rule was abolished, the Electoral College had the right to preselect the candidate, but such right seemed to take some account of the earlier poll results. The College appears to have applied some formula.

What seems to me to be important is that the preselection process within a political party is such that it is transparent and transparently exercised free of any taint of electoral fraud or coercion, and one in which party voters at plebiscites and voters at a general election can know with confidence that fair means produced a candidate.

In my view, the evidence emphasises the need for the ALP rules about elections to reflect the sentiments of section 440 of the *Industrial Relations Act 1999*. I shall shortly set out this section and its general requirement of transparency as well as its correlative section 442.

Queensland electors who are periodically required to vote at elections for Members of the Legislative Assembly and local government councillors no doubt recognise that candidates standing at elections will come from one or more of what are commonly recognised as the major parties — the ALP, Liberal Party or National Party. There are also lesser parties.

Queensland electors at such elections may well be entitled to expect that in any political party the procedures whereby that party chooses or selects its candidates will be transparently fair and not affected by fraud or coercion.

This Inquiry has been given insight into the preselection processes of the ALP, Queensland Branch only. Some aspects of that process described by the evidence of Ehrmann — and its accuracy has not been challenged — may raise real concern in the community as to whether or not each ALP candidate presented at each general election, whether for the Legislative Assembly or a local government, has been freely and fairly chosen. The members of the voting public must have confidence that all ALP candidates have been selected by a transparent process free of fraud or coercion. The same comment can fairly apply to selection of candidates by other parties.

On 14 December 2000, Professor Hughes orally submitted to the JSCM that Party preselection processes are a vital part of the electoral process. He made the following points:

- It is highly desirable that preselections for all political parties be more transparent, more independently or properly monitored. Professor Hughes gave two reasons for this — first — preselection has been the principal stimulant to attacks on the integrity of the roll [as appeared from the evidence which to that date had come from this Inquiry]. Secondly — preselection is a vital part of the electoral process — ‘A large number of members of parliament are chosen by their preselection process and what happens afterwards is a coronation.’

He added:

That vital part of the process ought to be as respectable as it can be made — not open to the sort of undoubtedly truthful and undoubtedly damaging reports that have been appearing as to how people actually got to Parliament. That is why I think it is desirable that it be made more transparent and that the persons aggrieved at outcomes have better recourse to some remedy not only on behalf of themselves and their own blighted careers but also on behalf of the public as a whole.

- Any amplification of the criminal electoral law ought to be compatible with what is already the situation —  
what is an offence against the present electoral act, state or federal, ought to be transported into the preselection process to the extent that it

becomes necessary — for example, bribery, which is covered by the electoral act. If there is a bribe offered, paid or sought in the preselection process, that should be a criminal offence of much the same sort of scale.

- He sees an advantage in having a party's membership roll such that it coincides with an electoral roll entry.
- He thinks the ALP requirement in its rules about a coincidence with a membership address and an electoral roll address 'is a sensible way to go'. He added, 'The electoral process is, after all, an aspect of citizenship and of some commitment to the country.'
- Persons who engage in fraudulent activity with electoral rolls directed at internal party processes should be penalised by blighting their careers by making the offence a disqualifying offence and the penalty must not be inadequate.

I agree with these observations. Professor Hughes has recommended that such processes be made more transparent and that persons who are aggrieved at outcomes be given a better recourse to some remedy. Clearly, this applies to the ALP and all other political parties. For my part, I emphasise his reference to transparency — in my view transparency is a very important aspect of any preselection and election process.

In relation to the question of transparency, I note the following provisions of sections 440 and 442 of the *Industrial Relations Act 1999* (Qld). I have already mentioned section 440:

#### **General requirement of transparency**

440 An organisation's rules about elections must, as far as practicable, ensure —

- (a) the processes under which its elections are conducted are transparent; and
- (b) no irregularities can happen in an election for the organisation or a branch of the organisation.

#### **Direct voting or collegiate electoral system must be used**

442 An organisation's rules must provide for the election of its elected officers by a direct voting system or a collegiate electoral system.

Sections 440 and 442 appear in Division 1 of 'Part A — Election Rules'.

Division 1 contains definitions of 'direct voting system' for Part 4 (see section 438) and 'collegiate electoral system' for Part 4 (see section 439). I have mentioned the provisions of sections 440 and 442 because it seems to me at least desirable that the sentiments expressed in section 440 should be adopted by, and be manifest in, the ALP's comparable procedures — indeed there is every reason why all political parties should, desirably, have rules about elections which contain the sentiments of section 440.

Because of the importance of the preselection process — Professor Hughes describes it as 'a vital part of the electoral process' — and because, again as Professor Hughes says, it is highly desirable that preselections for political parties (where such parties have a preselection process) be more transparent and more independently and properly monitored, it seems to me that preselections for such political parties of persons to represent the parties at an election should be conducted by the Australian Electoral Commission or the Electoral Commission Queensland.

Legislation will no doubt be needed and such legislation will no doubt be seen as interfering in the internal affairs of a political party. I have not been made aware of preselection processes of parties other than the ALP. Nevertheless, in light of the disclosures at this Inquiry concerning possible illegal conduct touching both the enrolment and voting processes, it may be thought that the time has come for the Governments, both State and Federal, to consider imposing a suitable system and procedure for conducting (where necessary) preselections of persons to represent political parties at an election. Whether there should be such imposition will depend on balancing the need for transparency and independent and proper monitoring with

a party's right to conduct and to determine the manner of conducting its own internal preselection process.

I should be surprised if suitable advice cannot be readily obtained as to the best system and procedure. The public must have confidence that each person preselected has been chosen in a free, fair and transparent fashion.

Of course, it may well be that each party has to pay some fee to the Australian Electoral Commission or Electoral Commission Queensland for conducting the preselection. I would regard that payment as a small price for satisfying the voting public that the preselection process has been transparent and fairly conducted.

I should add that if any political party wishes to retain some process for appeal from a preselection result and retain or provide for an appellate body to hear and determine that appeal, then that process will no doubt be a matter to be resolved between the political party and the Government.

The views that I have expressed in the several preceding paragraphs are to some extent based on the evidence of Kaiser and Ehrmann concerning the influence which factions appear capable of exerting in a preselection process in the ALP. As I have already said, their evidence was not contradicted in the Inquiry.

The views are also largely based on those of Professor Hughes. I have not heard submissions touching on his views but, because of his experience and expertise in the electoral process, I felt that what he said on the topic was of considerable weight and as such should be mentioned by me. If either the Government or LCARC proposes to take note of my comments, I imagine submissions will be sought on the validity or otherwise of what Professor Hughes has said.

## TIME LIMITATIONS FOR OFFENCES

One matter that is very clear from the proceedings before this Inquiry is that the Inquiry has been extremely limited in what prosecution action it can recommend, solely because of the time limits for prosecution that apply to the relevant legislation that has been transgressed. In most cases that legislation was the CE Act. If the offences committed had been indictable and therefore not subject to a time limitation for prosecution — a time limitation that has long since expired — I would have been able to consider many prosecutions.

It is difficult to understand why the Commonwealth offence of making a false claim affecting the electoral roll is not an indictable offence. (See section 339(1)(k) of the CE Act, which provides for a maximum sentence of six months' imprisonment and section 15B of the Crimes Act by which prosecution of that offence after one year is barred.) After all, the integrity of the electoral roll is fundamental to the legitimacy of our democratic system.

It is clear from this Inquiry that evidence of falsification of the electoral rolls may not be revealed for many years after the event. I agree with the submissions of Counsel Assisting that if it were generally recognised that making a false claim on an electoral enrolment form were an indictable offence and therefore not subject to a time limitation for prosecution, this in itself would be a significant deterrent to would-be offenders.

That the electoral laws operating in Queensland also need revision and tightening to prevent, as far as possible, electoral fraud should not be in doubt. I will turn now to a discussion of the relevant Queensland provisions and its Criminal Code of Queensland predecessor.

I have earlier commented on Chapter 14 of the Criminal Code of Queensland, which is headed 'Corrupt and Improper Practices at Elections'. I have also discussed the definition of 'election' and discussed section 98A inserted in 1993, which says:

This chapter does not apply to an election for the Legislative Assembly or a local government.

In Part 9 of the *Electoral Act 1992* appear ‘offences in general’, ‘offences relating to electoral advertising etc.’ and ‘offences relating to voting etc.’. Some of these offences are similar to, or identical in name with, offences contained in Chapter 14. However, as already pointed out, none of the offences in Part 9 is designated to be other than a simple offence (see section 3(5) of the Criminal Code of Queensland). Consequently prosecutions for any offences under Part 9 are summarily brought and the time limit of one year prescribed by the *Justices Act 1886* (as amended) applies.

Offences under Part 9 are not designated in the Electoral Act as crimes or misdemeanours. In fact, and I hesitate to be critical of the drafting style in Part 9, but given the provisions of section 3 of the Criminal Code of Queensland, which divides offences into two kinds, i.e. criminal offences and regulatory offences, and subdivides criminal offences into crimes, misdemeanours and simple offences, I should have thought that in drafting criminal offences in a statute, the drafter should indicate into what category the offence falls — ‘An offence not otherwise designated is a simple offence’ (section 3(5) Criminal Code of Queensland).

I can best illustrate my point by referring to section 111(1) in Chapter 14 and comparing it with section 171(1)(c), which is in Part 9 of the Electoral Act. Section 111(1) reads:

Any person who places, or is privy to placing in a ballot box a ballot paper which has not been lawfully handed to and marked by an elector is guilty of a crime and is liable to imprisonment for seven years.

This particular offence is described in Chapter 14 as ‘stuffing ballot boxes’.

By way of comparison, section 171(1)(c) of the Electoral Act, which is one of a number of offences identified in section 171 under the heading ‘Offences relating to ballot papers’, reads:

A person must not

...

(c) place in a ballot box a ballot paper that has not been

(i) given to an elector under this Act; or

(ii) marked by the elector

Maximum penalty — 20 penalty units or six months’ imprisonment.

The offences in the two sections are very similar indeed. No category of offence appears in section 171.

I do not propose to catalogue all the offences in the Electoral Act, but using the examples I have given above — each seems to be the same type of offence relating to ballot papers — there appears to be a gross inconsistency in penalties for these two offences, both of which remain on the statute books. Furthermore, an offence under section 171(1)(c) is a simple offence and as such prosecution proceedings have a time limitation. An offence under section 111 has no time limitation. The inconsistencies should not be allowed to remain. Accepting the effect of the provisions of section 98A and accepting too that it may be at present difficult to identify an election to which section 111(1) can apply, the gross disparity between the sentences to which offenders are liable under the two Acts, plus the fact that in section 111 the offence is a crime for which there is no time bar and in section 171(1)(c) the offence is a simple offence and subject to a time bar, emphasises the need for review by the Government.

The differences between the Electoral Act and Chapter 14 are such that persons charged with crimes or misdemeanours designated in Chapter 14 in comparison with persons charged with similar acts which, under the Electoral Act, are simple offences, may well justifiably feel discriminated against.

In this comment concerning Chapter 14 and the Electoral Act, I bear in mind that Commonwealth criminal legislation will apply to offences involving electoral enrolment applications made to the Australian Electoral Commission and that the Commonwealth Act provides for a range of electoral offences.

Nevertheless, there is apparent duplication in the Electoral Act and Chapter 14 concerning what the Criminal Code of Queensland describes as 'corrupt and improper practices at elections'.

I add that in my opinion the Government should consider reviewing the time bar of one year imposed by section 107 of the Criminal Code of Queensland (within Chapter 14) for prosecution of any of the following offences, which appear in Chapter 14.

- Personation (s. 99) — classified as a 'crime' — liable to two years' imprisonment;
- Double voting (s. 100) — classified as a 'crime' — liable to two years' imprisonment;
- Treating (s. 101) — classified as a misdemeanor — liable to one year's imprisonment or fine of \$400;
- Undue influence (s. 102) — classified as a misdemeanor — liable to one year's imprisonment or fine of \$400;
- Bribery (s. 100) — classified as a misdemeanor — liable to one year's imprisonment or fine of \$400;
- Various illegal practices (s. 100) — each classified as a misdemeanor — liable to one year's imprisonment or fine of \$400;
- Other illegal practices (s. 100) — each classified as 'an offence' and liable on summary conviction to a fine of \$200.

(Section 104 was repealed in 1993.)

Section 107 inserted in 1993 now reads:

- (1) A prosecution for any of the offences defined in sections 99 to 106 must be begun within 1 year after the offence is committed.
- (2) The service or execution of process on or against the alleged offender is deemed to be the commencement of the prosecution, unless such service or execution is prevented by some act on the person's part, in which case the issue of the process is deemed to be the commencement of the proceeding.

The former section 107 read:

A prosecution for any of the offences hereinbefore defined in this Chapter must be begun within one year after the offence is committed, or, if it is committed with respect to a parliamentary election with respect to which a petition is tried by the Elections Tribunal, within three months after the report of the Elections Tribunal is made, whichever period last express, so that it is begun within two years after the offence is committed.

The service or execution of process on or against the alleged offender is deemed to be the commencement of the prosecution, unless such service or execution is prevented by some act on his part, in which case the issue of the process is deemed to be the commencement of the proceeding.

That former section 107 provided that in the circumstances set out a prosecution could be begun within two years after an offence was committed. It seems to me desirable that Queensland electoral legislation should contain provisions similar to those in the former section 107, which will enable a prosecution to be begun within two years. The experience of this Inquiry has been that electoral offences have been uncovered, but that many of them cannot be prosecuted because of a much shorter statutory time bar.

I should expect that hearings commenced under the Electoral Act before the Court of Disputed Returns might well bring transgressions to light. I realise that hearings of that Court occur promptly after an election, e.g. a period of some six months elapsed between date of election and judgment by Mr Justice Ambrose (8 December 1995) in the case of the Mundingburra by-election.

The Government should review and consider:

- (a) designation of offences in the *Electoral Act 1992* and not leave all offences in that Act undesignated and therefore simple offences;
- (b) penalties imposed by the *Electoral Act 1992*.

I add that it is highly desirable that original enrolment applications be retained by the Commissions so that if the need arises they are readily available in the event of, say, forgery charges. How long they should be retained is difficult to gauge, but I should have thought for at least three years and arguably longer. Whether such retention is logistically possible the Commissions can probably say.

### Increased penalties

For a number of offences it appears that penalties including maximum terms of imprisonment should be reviewed and consideration given to increasing them — if this is not done the deterrence element in sentencing will be substantially devalued. I realise that in EARC's *Report on the Review of the Elections Act 1983–1991 and Related Matters*, that body made recommendations concerning penalties then prescribed under the *Elections Act 1983–1991* and in doing so considered electoral offences and penalties thereof under the *Elections Act 1983–1991*, relevant offences under the Criminal Code of Queensland and 'Major Electoral Offences — Australian States and the Commonwealth'. Nevertheless, in light of the evidence at this Inquiry, it appears the time has come for a further review of penalties prescribed by the *Electoral Act 1992*.

I mention now, but do not repeat, comments of two members of the Court of Appeal when giving judgment dismissing Ehrmann's application for leave to appeal against sentence — these are set out earlier in this report. Although it may be said that her case concerned the Crimes Act, it is obvious that the Court of Appeal viewed Ehrmann as having committed serious offences deserving imprisonment.

### CODES OF CONDUCT FOR MLAs AND COUNCILLORS

Mr McMurdo, QC, in the extracts from his opinion set out earlier in this report (and with which I agree), has said:

- (a) that in respect of Members of the Legislative Assembly there is no relevant disciplinary standard or norm of conduct nor is there any provision for the disciplining of a member under some regime which might terminate the member's services;
- (b) that there is no prescribed disciplinary standard or disciplinary regime for local authority councillors.

In addition, I note that MLAs at present do not have any code of conduct let alone a code breach of which could result in 'termination of' [the member's] 'services'.

In fairness to members of the Legislative Assembly, I record that a document styled 'Code of Ethical Standards' dated 5 September 2000 was proposed as part of a final 'Report on a Code of Ethical Standards for Members of the Legislative Assembly' (Report No. 44) by the Members' Ethics and Parliamentary Privileges Committee. That proposed Code although tabled in Parliament has not yet become law, although I understand that on 5 April 2001 the Premier gave notice of his intention to introduce a motion to have Parliament formally adopt the Statement of Fundamental Principles, which forms part of the proposed Code.

It will be helpful if I now give the following short review of events leading to the tabling of the proposed 'Code of Ethical Standards' last September.

Codes of conduct for Members of Parliament have been under discussion in Queensland since at least 1989, when the Fitzgerald Report recommended that EARC investigate codes of conduct for public officials.

EARC reported on the issue in 1992 and proposed a Public Sector Ethics Bill, which would include a statement of ethical principles underlying good government and public administration, and would provide for separate codes of conduct for elected and appointed officials in Queensland.

Subsequently, Parliament passed the *Public Sector Ethics Act 1994*, which introduced

ethical principles and obligations and the requirement for codes of conduct for appointed officials throughout the public sector. However, the Act departed from the recommendations of EARC in that it did not apply to MLAs; nor, so far as I am aware, did it apply to local government councillors. Instead, the *Parliamentary Committees Act 1995* established the Members Ethics and Parliamentary Privileges Committee and gave it statutory responsibility for recommending a code of conduct for MLAs having regard to the ethics principles and obligations in the Public Sector Ethics Act.

Under Part 4 of the Public Sector Ethics Act, headed 'Codes of Conduct for Public Officials', a code of conduct must relate to a particular public sector entity and apply to all public officials of the entity (section 13(1)). By definition (see 'Schedule — Dictionary' in the Act) 'public sector entity' does not mention Legislative Assembly or Members thereof, but it does mean 'a local government'.

Section 14 of the Public Sector Ethics Act deals with contents of codes of conduct for public officials and section 15 of the same Act reads:

15 The chief executive officer of a public sector entity must ensure that a code of conduct is prepared for the entity.

'Chief executive officer' bears two relevant meanings. The first is — 'chief executive officer of a public sector entity' means:

...

(d) for a local government — the local government's chief executive officer.

The second is:

'Chief executive officer' of a local government includes the town clerk of Brisbane City Council.

The Public Sector Ethics Act in Part 7 has established the Office of Queensland Integrity Commissioner (section 26). That office is presently filled by the Honourable A G Demack. The purpose of Part 7 is expressly said to be 'to help Ministers and others to avoid conflicts of interest and in so doing encourage confidence in public institutions.'

The Public Sector Ethics Act 'binds all persons including the State' (section 3). Thus the Act binds Members of the Legislative Assembly.

It occurs to me that the Integrity Commissioner might well be able to proffer to any of the 'designated persons' mentioned in section 27 of the Public Sector Ethics Act — including the Premier — advice on how best to deal with absences of the codes of conduct for Members of the Legislative Assembly and local government councillors. I add that it seems that the Code of Ethical Standards, dated 5 September 2000, may shortly become law and provide the Legislative Assembly's version of a code of conduct for MLAs.

The Public Sector Ethics Act does not itself provide for any offences, save that in Part 7 'Integrity Commissioner' one finds an offence prescribed in section 33 in Division 6 headed 'confidentiality and protection'. The Act's preamble describes it as 'An Act about public sector ethics and conduct and to provide for an Integrity Commissioner'.

Part 4 of the Act deals with codes of conduct for public officials and section 18 (within Part 4) reads:

A public official of a public sector entity must comply with the conduct obligations stated in the entity's code of conduct that apply to the official.

Part 6 of the Act, headed 'Disciplinary Action for Contravention of Approved Codes of Conduct', reads:

Section 24. It is the intention of Parliament that any disciplinary action for a contravention of an approved code of conduct by a public official of a public sector entity should be dealt with under —

(a) if the official is a public service officer — the *Public Service Act 1996*; or

- (b) if the official is a local government employee — the local government legislation applying to the local government; or
- (c) if the official is not a public service officer or a local government employee but there are disciplinary processes applying to the official — the disciplinary processes; or
- (d) if there are no disciplinary processes applying to the official — the regulations.

Note that because of the definitions of ‘public official’ and ‘public sector entity’ in the Public Sector Ethics Act, section 24 does not apply to MLAs and local government councillors.

It seems that the Public Sector Ethics Act has:

- (a) placed on the chief executive officer of a public sector entity responsibility to ensure that a code of conduct is prepared for the entity;
- (b) provided machinery for approval of the code by a responsible authority;
- (c) defined ‘public sector entity’ in such a way that Members of the Legislative Assembly and Local government councillors are excluded from the definition of ‘public sector entity’ and thereby from the provisions of the Act (see section 24);
- (d) defined responsible authority in such a way that in a number of cases the Speaker and various Ministers are designated a ‘responsible authority’ and in the case of a Misconduct Tribunal under the *Misconduct Tribunals Act 1997* the Minister responsible for administering the *Misconduct Tribunals Act 1997* is the ‘responsible authority’ for that Tribunal.

A code of conduct for MLAs is desirable for several reasons. Codes of ethics and codes of conduct play an important part in establishing and maintaining an ethical environment for all organisations. Members of Parliament operate in a particularly complex ethical environment, partly because they must balance many separate and sometimes opposing responsibilities to their constituents, the general public, their political parties and Parliament. An appropriate code can help Members in this difficult task, and can also demonstrate or help demonstrate to the public that Members have a genuine commitment to ethical behaviour.

In this context, it is hoped that the issuing of a code of conduct for MLAs and the foreshadowed formal adoption by Parliament of the *Code of Ethical Standards* will assist in raising general standards of behaviour amongst MLAs in Queensland. It says nothing directly to local government councillors, although it will no doubt provide some guidance.

As far as the specific issue of electoral fraud is concerned, the proposed code performs a useful educative role in spelling out clearly to MLAs the provisions of the *Electoral Act 1992* relating to the conduct of elections (see 3.8.2 of the proposed code). Of course, MLAs need to be aware of the provisions of the CE Act and especially those relating to enrolment and changes of enrolment. It is suggested, however, that the message would be strengthened if the ‘Statement of Fundamental Principles’ set out at the start of the proposed code explicitly emphasised that MLAs have an ethical — as well as a legal — obligation to comply with relevant laws. This could be achieved by incorporating into the proposed code the ethics principles for public officials set out in the Public Sector Ethics Act, in particular ‘respect for the law and system of government’ and ‘upholding the laws of the State and Government’.

While the formal adoption of the code is to be welcomed, it remains to be seen whether the adoption will lead to Parliament taking a more active role in dealing with MLAs who engage in improper electoral practices. The code creates no new enforceable obligations. Further, it appears that the Members’ Ethics and Parliamentary Privileges Committee has expressed the clear view that breaches of the CE Act and Criminal Code of Queensland should be dealt with by the Courts, rather than the Committee.



I suggest that when the Premier's motion is debated, Parliament at the same time consider my comments and also consider taking steps to ensure that all local authorities have a code of conduct for councillors.

## ELECTORAL AGENCY

### The English experience

It seems to me that in Queensland, and I expect in the Commonwealth, we can learn from experiences in England where the Mother of Parliaments resides and from the manner in which the English legislation has dealt with problems of corrupt and illegal practices at elections. Dr Rawlings (1988, pp. 225 and 240) spoke of the remarkable absence of corruption and illegal practices in the British electoral system:

The number of petitions brought alleging corrupt or illegal practices is very small ... A number of reasons may be suggested for this paucity of petitions. First, there can be no doubt that the processes of electioneering have become markedly less illegitimate. The overt corruption which characterised much Victorian campaigning has entirely disappeared in the face of a more highly educated electorate, an electoral campaigning law which, even if significantly flawed by omission [the omission appears to relate to expenditure rules], provides a coherent framework for constituency electioneering and the development of national media attention which would not allow such practices to go unremarked upon.

Secondly, our electoral law provides an escape route for those who may inadvertently have committed illegal (as distinct from corrupt) practices allowing them to pre-empt the possibility of becoming respondents to election petitions ...

But perhaps the most important reason for the paucity of petitions alleging corrupt or illegal practices relates to the nature of petition proceedings. As was previously mentioned, these cases are fought out as private actions ... Unsuccessful candidates must initiate petitions, and in practice this will almost certainly mean candidates who have been authorised to do so by, and have received financial backing from, their parties. It has long been recognised that it is hardly in the interests of the parties to seek to overturn their opponents' victories by election petition:

This is not because malpractices are never suspected ... but because the process of petitioning is expensive and uncertain. As one senior official said: "If we lost a seat by one vote and I could clearly prove illegal practices by the other side I wouldn't try. It would cost perhaps £5,000 and they might be able to show that our man had slipped up in some way. But worse than that, it might start tit-for-tat petitions and no party could afford a lot of them. On the whole, we're both law-abiding and it's as well to leave each other alone." [Quoted in Nuffield (1959) study, p. 280]

The figure of £5,000 would today require to be multiplied several times. It is now merely the sum for which petitioners must give security when first presenting a parliamentary election petition.

In some respects this is unsatisfactory. It makes little sense to leave a framework of electioneering law to be enforced by parties which have good reason for not initiating petitions, save in rare or exceptional circumstances. In 1948 the Committee on Electoral Law Reform recommended that the costs of petitioning be reduced by placing the responsibility for pursuing such proceedings in the hands of a public official, once a *prima facie* case had been established by a private petitioner:

Irregularities at elections should not be regarded as a private wrong which an individual must come forward to remedy, but as attempts to wreck the machinery of representative government and as an attack upon national institutions which the nation should concern itself to repel.

This recommendation was not adopted, but in any event its adoption now might not be very significant, as parties would presumably still be reluctant to initiate the procedure.

Given the apparent success in the British electoral system, and despite Dr Rawlings above caveats, the Queensland Government in my view would do well to examine the English legislation in order to decide how best to overcome the types of illegal

conduct exposed at this Inquiry. No doubt the Queensland Government will take appropriate advice from suitably qualified experts on how to achieve this end. I do not propose to comment on the scope of such advice. LCARC has already received certain advice in the form of submissions from various persons.

### Difficulties highlighted by this Inquiry

One step, I suggest, is to incorporate in the statute law of Queensland provisions (perhaps similar to those presently in force in England or contained in earlier Queensland legislation) concerning agency in relation to a candidate at an election in Queensland and to proceedings before the Queensland Court of Disputed Returns (as to which Court see Part 8 of the *Electoral Act 1992*). I have raised the matter of agency because the present Inquiry has shown how difficult it can be to prove whether or not a candidate knew of the illegal conduct of his or her supporters, that conduct having been engaged in in order to try to ensure the candidate would win.

For instance, Lee Bermingham in evidence said:

It's not the sort of thing I would discuss with a candidate ... it's not the sort of information I would impart to them or give to them. (T2584)

If Bermingham were speaking the truth, he saw it as part of his role not to tell the candidate for whom he was working of his (Bermingham's) skulduggery in an electoral campaign.

If by statute the illegal conduct of a candidate's agent, committed in relation to the election, were sheeted home to the candidate by making the candidate responsible for that conduct with the consequence that the election of a successful candidate was declared void with, in an appropriate case, a further penalty imposed on the candidate, then there will be a powerful incentive for each candidate to ensure that his or her agent and subagents behave impeccably and not in a manner that might cause the successful candidate to have his or her win declared void. Among the factors contributing to that incentive might well be loss of ability to participate in qualifying for a Member's parliamentary superannuation.

At this stage I should add that I recognise there are two other types of agency — agency applicable to a criminal charge and agency applicable to actions of a civil kind. I do not propose to mention the latter kind. If a candidate is proved to have actually committed a criminal offence, he or she is criminally responsible. If the offence is committed by his or her agent, then under Queensland law he or she will be criminally responsible if caught by sections 7 and/or 8 of the Criminal Code of Queensland. If the offence is committed against Commonwealth law, he or she will be criminally responsible if he or she aided, abetted, counselled or procured the agent or subagent in the commission of the offence.

I set out in attachment 11 to this report a review of the history of the concept of electoral agency in England and Queensland.

Attachment 12 sets out sections 121–128 of the *Elections Act 1915–1936* showing the statutory concept of electoral agency. These sections were effectively continued by the *Elections Act 1983–1991* (in sections 158 to 165) (both inclusive)). I have set out these sections in full so that readers can see what was, in my view, a vital part of the scheme of the Elections Acts up until 1992.

By the *Electoral Administrative and Review Act 1989–1990*, the Queensland Government established EARC to investigate and report from time to time in relation to the whole or part of the Legislative Assembly electoral system and the whole or part of the Local Authority electoral system. As a result of that Commission's report, a new Electoral Act was enacted in 1992.

Attachment 13 sets out some of the deliberations and recommendations of that Commission and my comments.

The earlier statutory provisions dealing with electoral agency were not reproduced in the *Electoral Act 1992*, although I note that:

- (a) The Review Vol. II at paras 13.22 and 13.23 in dealing with the then current situation mentioned the effect of sections 161, 162 and 163 of the *Elections Act 1983–1991* (sections 161, 162 and 163 equated to sections 124, 125 and 126 of the *Elections Act 1915–1936*). The Review said:
- 13.22 If the Tribunal finds that a candidate either committed, or had knowledge of and consented to, a corrupt practice (other than treating or undue influence), the candidate's election is void (section 161). In the case of a candidate found guilty of actually committing the offences of treating or undue influence, if the candidate was elected, then that candidate's election is void (section 161).
- 13.23 A candidate's election may also be voided where the candidate's agent has been guilty of a corrupt practice (section 162) or where the candidate has connived in the perpetration of the corrupt practice (section 163).
- (b) Vol. 1 of the Review at para 7.180 when dealing with 'Eligibility criteria for candidate' set out sections 161, 162 and 163 of the 1983–1991 Act and pointed out that those sections precluded certain candidates from being elected to or sitting in the Legislative Assembly.

Part 8 of the 1992 Act is headed 'Court of Disputed Returns' and encompasses sections 127 to 148 of the 1992 Act and as I have said, does not reproduce subsections 158 to 165 (both inclusive) of the *Elections Act 1983–1991*.

Apart from severing any connection with the English electoral law, the *Electoral Act 1992* has brought about the following:

1. abolished the distinction between corrupt practices and illegal practices and brought all such former practices under the one umbrella — 'illegal election practice' which is defined as any contravention of the *Electoral Act 1992* (section 4 of the *Electoral Act 1992*).
2. not retained for the Court of Disputed Returns (the successor to the Elections Tribunal of the 1983–1991 Act) or abolished
  - (a) the power to go into and receive, in the trial of a petition or reference, evidence in relation to a charge of corrupt practice (section 158 of 1983–85 Act).
  - (b) the obligation of the Court to report in writing to the Speaker of the Legislative Assembly:
    - (i) whether corrupt practice has been proved to have been committed by or with the knowledge and consent of any candidate at an election and the nature of such corrupt practice (section 159(1)(a) of 1983–91 Act).
    - (ii) the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice (section 159(1)(b) of 1983–91 Act).
    - (iii) whether corrupt practices have or whether there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates (section 159(1)(c) of 1983–91 Act).
  - (c) the discretion of the judge sitting as the Court of Disputed Returns to hand a special report to the Speaker as to any matters arising in the course of the trial, of which, in his judgment an account ought to be submitted to the Legislative Assembly (section 159(2) of 1983–91 Act).
3. abolished the obligation of the judge to certify his determination in writing to the Speaker (section 152 of the 1983–91 Act) although section 139 of the 1992 Act requires the Court of Disputed Returns to send the Clerk of the Parliament a copy of the Court's final order.
4. abolished the effect of section 160 of the 1983–91 Act whereby the Legislative Assembly on being informed by the Speaker of such reports and a certificate under section 152 should take certain prescribed steps.

5. abolished the effect of section 161 of the 1983–91 Act whereby if upon the trial of a petition the judge reported:
  - (a) that any corrupt practice other than treating or undue influence has been proved to have been committed with reference to the election to which the petition relates by or with the knowledge and consent of any candidate at the election; or
  - (b) that the offence of treating or undue influence has been proved to have been committed with reference to the election by any candidate at the election

that candidate should not be capable of being elected to or sitting in the Legislative Assembly for a period of three years and if he has been elected his election shall be void.

6. abolished the effect of section 162 of the 1983–91 Act whereby if upon the trial of a petition in which a charge is made of any corrupt practice having been committed with reference to the election to which the petition relates the judge reported that a candidate at the election has been guilty by **his agents** of any corrupt practice with reference to the election that candidate shall not be capable of being elected to or sitting in the Legislative Assembly for the district in question during the Parliament for which the election was held and if he has been elected, his election shall be void.

(In my opinion the omission from the 1992 Act of a section equivalent to section 162 above had a very significant consequence. It meant that guilt of a candidate by his agents of a corrupt practice could no longer occur in Queensland — the English Common Law concerning electoral agents of candidates no longer applied in Queensland and in the event that one of the candidate's agents committed a corrupt practice the candidate could wash his or her hands of it by stating (and swearing) that he or she knew nothing of it and it was 'all a great surprise to me'.)

7. abolished the effect of section 163(1) of the 1983–91 Act whereby if upon the trial of a petition the judge reported that any illegal practice is proved to have been committed with reference to the election to which the petition relates by or with the knowledge or consent of any candidate at the election, that candidate shall not be capable of being elected to or sitting in the Legislative Assembly for the district in question for three years next after the date of the report, and if he has been elected his election shall be void.
8. abolished the effect of section 163(2) of the 1983–91 Act whereby in addition to the penalty imposed by section 163(1) the candidate was subject to the same incapacities as those to which he would be subject if at the date of the report he had been convicted of such illegal practice.
9. abolished the effect of section 164 of the 1983–91 Act where upon the trial of a petition the judge reports that a candidate at the election to which the petition relates, has been guilty by his agents of the offences of treating, undue influence and illegal practice or of any of such offences with reference to the election and further reports that the candidate has proved —
  - (a) that no corrupt or illegal practice was committed at the election by the candidate himself and the offences mentioned in the report were committed contrary to his orders and without his sanction or connivance;
  - (b) that the candidate took all reasonable steps to prevent the commission of corrupt or illegal practice at the election;
  - (c) that the offences mentioned in the report were of a trivial, unimportant and limited character; and
  - (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate the election of such candidate should not, by reason of the offences mentioned in the report, be void, and the candidate should not be subject to any incapacity under the *Elections Act 1983–91*.

(Note the burden of proof placed on the candidate seeking relief under section 164.)

10. abolished the effect of section 165 of the 1983–91 Act which provided that where it appeared to the Elections Tribunal —
  - (a) that any act or omission of a candidate at an election or of his agent or of any other person that, by reason of being a payment engagement or contract in contravention of the *Elections Act 1983–91* or *The Queensland Criminal Code* or by reason of otherwise being in contravention of the *Elections Act 1983–91* or *The Criminal Code of Queensland*, would be but for section 165 an illegal practice, payment or hiring, arose or occurred from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise or occur from any want of good faith; and
  - (b) that in the circumstances it is just that the candidate, the agent and the other person should not be subject to any of the consequences under the *Elections Act 1983–91* of such act or omission, the Tribunal might make an order allowing such act or omission to be an exception from the provisions of the Act that would otherwise make the same an illegal practice, payment or hiring and thereupon such candidate, agent or person should not be subject to any of the consequences under the Act of the said act or omission.

As I have said, I have set out the above matters in some detail so that readers can see for themselves what was in my view a vital part of the scheme of the *Elections Act 1983–91* (now repealed). Readers can also see how that Statute dealt with a candidate reported personally guilty of corrupt practice, a candidate reported guilty by his agents of any corrupt practice, and a candidate reported guilty of illegal practice (as opposed to corrupt practice).

Under the *Electoral Act 1992* corrupt practices, as formerly known, are now included in illegal election practices. Only in the circumstances of section 176 of the *Electoral Act 1992* is there specific reference to the seat of a Member of the Legislative Assembly being vacated and a bar upon a person's entitlement to sit as a Member of the Legislative Assembly for three years after the conviction referred to in section 176. I have earlier commented on section 176.

Section 176, which is the only section in Division 4, provides that if a person is convicted of an offence against sections 154, 168 or 170(a) or (b), then if the person is a Member of the Legislative Assembly, the person's seat is vacated in accordance with the *Legislative Assembly Act 1867*, section 7(2) and in any case the person is not entitled to be elected or to sit as a member of the Legislative Assembly for three years after the conviction.

Leaving aside for the moment the fact that section 176 applies only if a person is convicted, it is instructive to see the types of offences referred to in section 176.

Section 154 provides for a comparatively minor offence — 'false misleading or incomplete documents' — for which the maximum penalty is 20 penalty units or six months' imprisonment. Section 168 is the offence of influencing, by violence or intimidation, the vote of a person at an election — this is a serious offence. Section 170(a) says a person must not vote at an election in the name of another person (including a dead or fictitious person). Section 170(b) says a person must not at an election vote more than once. Both section 170 offences are serious offences.

I suspect the reference to section 154 in section 176 is an error and that the correct reference should be to section 155, which deals with the offence of bribery for which the maximum penalty is 85 penalty units or two years' imprisonment — a serious offence. This suspicion has been confirmed by examining the Draft Bill for an Electoral Act in Volume 2 of EARC's *Report on the Review of the Elections Act 1983–1991 and Related Matters* and noting that the present section 155 was then numbered section 154. I add that section 7(2) of the *Legislative Assembly Act 1867* repeats the reference to section 154 and not section 155.

I was surprised to find in section 176 that the prerequisite to that section's operation is a conviction. From a practical viewpoint and knowing the time it can take for a criminal trial to occur after a relevant event and possible appeals to be heard and determined, it may well be that an elected person could have served the elected term or most of it before vacating the seat because of section 176. In other words, the elected person may suffer no effective penalty for breach of any of the stated sections.

In summary then —

- (a) the abandonment in 1992 of the former distinction between corrupt and illegal practices of elections

combined with

- (b) severance in 1992 of the former ties with the English electoral practice — concerning electoral agents of candidates

have meant that the principle of electoral agency has disappeared from Queensland electoral law. One result of this is that while the party supporters may work hard for a candidate's success at the election, and in so doing some commit corrupt and illegal practices, the candidate may know nothing of the corrupt and illegal conduct which helps him or her win the election. Indeed, the supporters may very well go out of their way to ensure that the candidate knows nothing of their nefarious deeds. For instance, the evidence of Lee Bermingham was to the effect that he would never tell a candidate he was supporting that he, Bermingham, was party to unlawful enrolments in the electoral rolls.

Such a state of affairs is capable of correction. An effective option is to impose sanctions on candidates where corrupt practices are committed by them or for their benefit. In my view, the necessary changes can be initiated by the Queensland Government.

I suggest the matter of electoral agency be addressed by the Government with a view to amending the Statute law of Queensland concerning electoral matters:

- (a) To define 'corrupt practices' separately from 'illegal electoral practices'.
- (b) To introduce the doctrines of electoral agency as exist in the Representation of the People Act 1983 (UK) and have existed in England for well over a century (see para 616 Halsbury quoted in Attachment 11). This includes making mandatory and public the appointment by each candidate of an election agent and appointment of subagents.
- (c) To make candidates liable to have their election voided by the Court of Disputed Returns for corrupt or illegal practices with the Court of Disputed Returns relying, if necessary, upon the doctrine of electoral agency.
- (d) To provide for the judge sitting as the Court of Disputed Returns the powers and obligations as appear in sections 158 to 165 (inclusive) of the *Elections Act 1983–1991* (with the arguable exception of section 163, which was the equivalent of section 126 of the earlier Act); the text of these sections appears earlier in this comment.

## THE LCARC INTERIM REPORT AND 'MINISTERIAL MEDIA STATEMENTS' 21 JANUARY 2001

I have seen the interim report *The Prevention of Electoral Fraud* prepared in November 2000 by LCARC. The report resulted from a resolution of the Legislative Assembly on 22 August 2000 that the Legislative Assembly request LCARC to investigate and report to State Parliament by 14 November 2000 on the best way to minimise electoral fraud at elections where the Queensland State Electoral Roll is used.

LCARC subsequently resolved to conduct an inquiry into the prevention of electoral fraud (enrolment fraud and voting fraud) in Queensland State, Local Government and Aboriginal and Islander Council elections. The interim report discloses LCARC's awareness of the Inquiry I conducted, as well as awareness of the inquiry by the JSCM. It received a number of submissions.

I do not propose to refer in any detail to what the interim report has to say, but I do mention the following:

1. Chapter 7 — 'Voting Procedures — Effectiveness and Options'
2. Chapter 8 — 'Enrolment Procedures — Effectiveness and Options'

These chapters set out to consider the effectiveness of existing voting and enrolment procedures to prevent and detect voting and enrolment fraud.

In each case the interim report mentions various reform options, and it is obvious that LCARC received some useful and worthwhile submission on reform options. Because its report was interim, the majority on the Committee made no comment about the necessity for or desirability of the proposals, which are listed in the above-named chapters.

The methods used to reform those procedures to combat and attempt to eliminate that type of fraud are matters for the Queensland and Commonwealth Governments. The latter Government is concerned because it controls the electoral roll used for Commonwealth and Queensland elections and much of the evidence of enrolment fraud which I heard concerned rolls under the control of the Australian Electoral Commission.

I also note a document styled 'Ministerial Media Statements', dated 21 January 2001 in which are contained extracts from what was there described as 'a far-reaching twin reform package' delivered by the Premier and 'designed to create the best system of government in the country and restore the public's faith in the electoral process'.

I trust that the Government and the Premier will require LCARC, now that it knows what enrolment and voting illegalities have been uncovered by my Inquiry, to take advice from appropriately qualified persons and conclude its investigations by providing a final report.

I trust also that the Government will take into account and adopt my suggestions particularly as to the law of electoral agency and the need to ensure transparency in the electoral process.

I note that the above Ministerial Media Statement forecast the convening by the end of June of a Special State Conference to examine further reform items. I note also that in the Governor's speech at the opening of Parliament on 21 March 2001, His Excellency said:

My Government will continue the reform process of the electoral system to enable the independent electoral commission to implement the 'Good Government Plan' on enrolment and voting.

I would hope that any governmental review of the electoral process is not limited to the ALP but will cover all parties. I say this because, as mentioned elsewhere in this report, Professor Colin Hughes suggests that in his opinion the sanctions of the criminal law should be made to apply generally to preselection procedures in political parties and that such preselection procedures must be transparent. I agree with the views expressed by Professor Hughes.

# Attachment 1 — Witness List

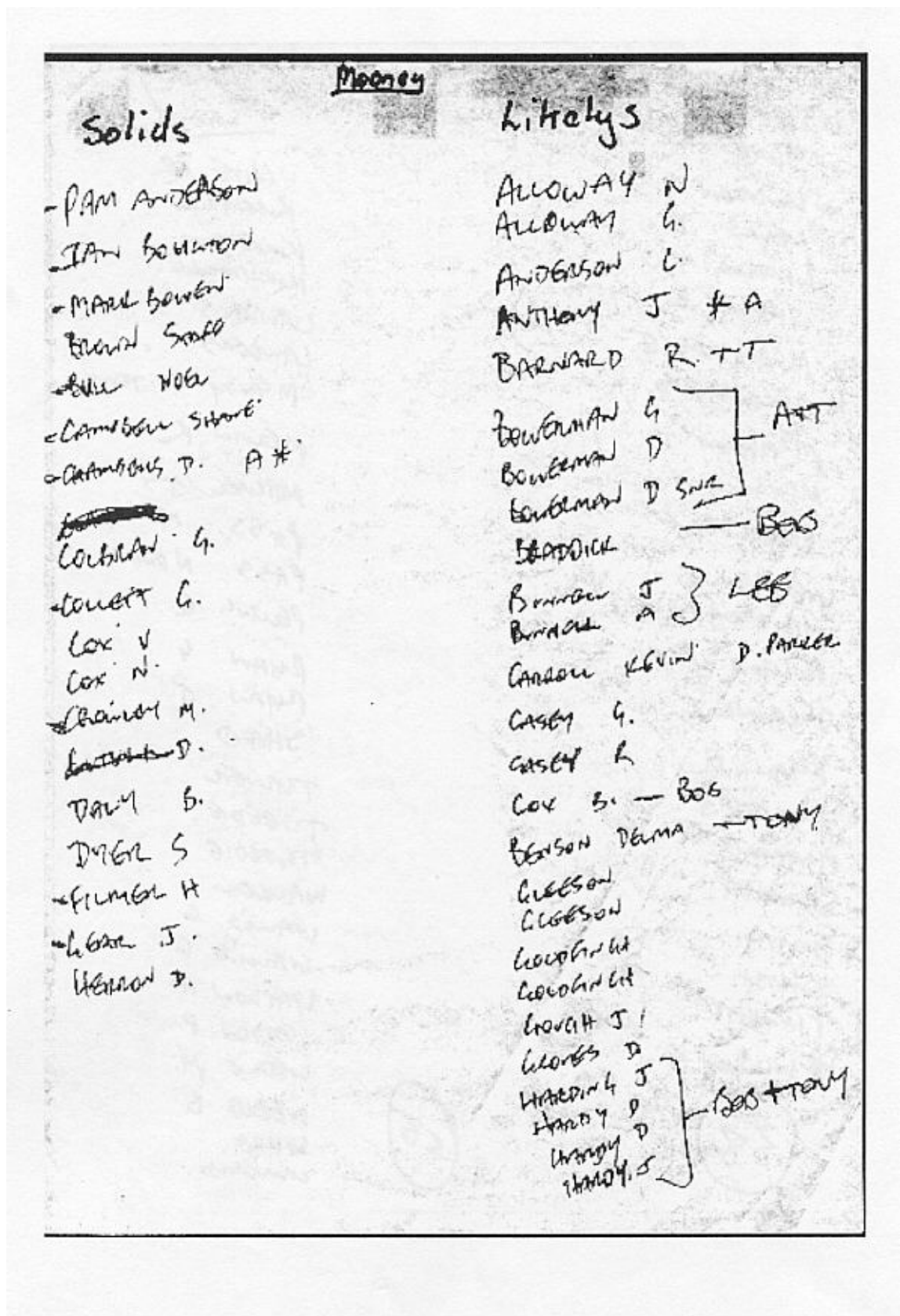
WITNESS	COUNSEL/SOLICITOR	INSTRUCTED BY/FROM
Peter Michael AICHER	Mr P Ware	Sciacca Lawyers
Gary ALLEN	Mr P Carne	Carne & Herd
Anna AUGUNAS	Mr M O'Connor	Gabriel, Ruddy & Garrett
David Peter BARBAGALLO	Mr S Zillman of Counsel and Mr G Cranny	Gilshenan & Luton
Ronald Morgan BARNARD	—	—
Catherine BERMINGHAM	Mr P Murphy	Patrick T Murphy
Lee Michael BERMINGHAM	Mr S Reidy	Reidy & Tonkin
Sean David BLACK	Mr I Dearden	Dearden Lawyers
James Bernard BOCCABELLA	—	—
Aaron John BROUGHTON	Mr S Zillman of Counsel	Gilshenan & Luton
Kerrie-Ann BROWN	Mr T O'Gorman	Robertson O'Gorman
Phillip Morrison BROWN	—	—
Joan BUDD	Mr P Carne	Carne & Herd
Ann BUNNELL	Mr H Walters of Counsel and Mr D Armit	Lee Turnull & Co
Van James BUNNELL	Mr H Walters of Counsel and Mr D Armit	Lee Turnbull & Co
Susan Gaye BURNS	Mr P Murphy	Patrick T Murphy
John Clifford CHERRY	Mr A Boe	Boe & Callaghan
Kevin Allen COURT	—	—
Lynnaine Paula DAWSON	—	—
Mohammed Sharif DEEN	Mr T O'Gorman	Robertson & O'Gorman
Leeanne Maree EHRlich	—	—
Karen Lynn EHRMANN	—	—
James Peter ELDER	M M Quinn	Gilshenan & Luton
Joseph Seconto FELICE	Mr T Williamson of Counsel and Mr I Bartels	Ian W Bartels and Associates
Gary Bernard FENLON	Mr P Davis of Counsel and Mr G Cranny	Gilshenan & Luton
Simon David FINN	Mr P Carne	Carne & Herd
Gary John FOGARTY	Mr S Zillman of Counsel	Gilshenan & Luton
Shane John FOSTER	—	—
Susan Margaret FOSTER	—	—
Dimitrios FOURAS	—	—
Dennis George FOX	—	—
Jennifer Carmel FOX	—	—
Linda Kay FRASER	Mr R Carew	Carew McKimmie
Graeme Robert HAMPTON	Mr S Zillman of Counsel	Gilshenan & Luton
Paul James HARRISON	Mr M Woods	Poteri Woods
Olaf Martin HEEREMANS	—	—
Ronald Noel HILL	Mr P Murphy	Patrick T Murphy
Pamela Nancy HIRNING	—	—
Linda Elizabeth HOLLIDAY	Mr P Carne	Carne & Herd
Sharon Linda HUMPHREYS	Mr P Carne	Carne & Herd
Lindesay Gordon Baeur JONES	—	—
Michael Hans KAISER	Mr A MacSporran of Counsel and Mr I Dearden	Dearden Lawyers and A J MacSporran
Andrew James KEHOE	Mr A Kimmins of Counsel	—
Beverley Clare LAUDER	—	—
Andrew Francis LINDEN	Mr P Ware	Sciacca Lawyers
Jamie Malcolm LONSDALE	—	—
Paul Thomas LUCAS	Mr A MacSporran of Counsel and Mr I Dearden	Dearden Lawyers



Sharon Lea LUCAS	–	–
Damien John LUNNEY	–	–
Ursula Jane LUNNEY	Mr P Murphy	Patrick T Murphy
Jenny Lee LYNAS	–	–
Danielle Catherine MARTIN	Ms P M Wright	J B Stevenson & Company
Robert Bruce McCALL	Mr S Zillman of Counsel	Gilshenan & Luton
Sean David McCLINTOCK	Mr P Murphy	Patrick T Murphy
Peta McVEAN	–	–
Anthony John MOONEY	Mr J Douglas, QC, of Counsel and Mr S Mosch	Suthers & Taylor
Rodney Geoffrey Kenneth MUGFORD	–	–
Dennis Brian MULLINS	–	–
Ashley Rohan MUSGROVE	Mr S Zillman of Counsel	Gilshenan & Luton
Grant Steven MUSGROVE	Mr S Zillman of Counsel	Gilshenan & Luton
Ross Andrew MUSGROVE	Mr S Zillman of Counsel	Gilshenan & Luton
James O'DONNELL	Mr H Walters of Counsel	Michael Owens & Associates
Jacqueline Marie O'MARA	–	–
Mark PETRIA	–	–
Warwick POWELL	Mr T O'Gorman	Robertson O'Gorman
Kerry Marie REA	Mr P Carne	Carne & Herd
Udo REEH	Mr R Feather	Mr R Feather
Antony REEVES	–	–
Michael Francis REYNOLDS	Mr R Devlin of Counsel and Mr G Humphries	Connolly Suthers
Michael Andrew RILEY	–	–
Shaun Albert ROHRLACH	Mr I Dearden	Dearden Lawyers
John Paul RONCHI	Mr P Ware	Sciacca Lawyers
Kevin Graham ROSE	–	–
Peter SHOOTER	–	–
Nicole Helene STEHN	Mr J Hutton of Counsel	–
Francis John TANTI	–	–
Denise Erica THOMPSON	–	–
Paul Gregory TULLY	Ms J Cheney	Chelmer Legal Practice
Robyn Lorraine TWELL	–	–
Anthony Craig VAN DER MEER	–	–
Craig Andrew WALLACE	–	–
Anne Marie WARNER	Ms B Callaghan	Boe & Callaghan
Tara Virginia WATERS	Mr P Byrne	Gilshenan & Luton
Marc Anthony ZANDE	–	–

## Attachment 2 — Exhibit 33B

Also referred to as **Exhibit 33** and **Exhibit 33A** in the course of the Inquiry.



## Attachment 3 — Exhibit 34B

Also referred to as Exhibit 34 and Exhibit 34A in the course of the Inquiry.

<u>Souls</u>	<u>McCarthy</u>	<u>Litany</u>
JONES R		CHIE R
LAWSON J		KUCZAK
LEWIS P		KUCZAK
LINDSAY T		KUCZAK
LINDSAY E		LAWSON
MCARTHUR J		LAWSON
MCLEOD D.		MCARDY T. Tony
MCMAHON T		MELVIN R
MCNALLY T.		MITCHELL J.
<del>McNALLY</del>		PASS M
NEWMAN E		PASS NODA
NEWMAN S		PERIN B.
NILTON A		RYAN G
O'CARROLL J.		RYAN J
RYAN N.		SHAND
SCHEIDT J		TURNER
SHANNA		TWEED
SHANNA		THODIG
SMITH		WALTON
SMITH		WALLIS C
TIMMOTT		WALLIS F
WILSON S.	WODE	WARDON H
		WATSON P.
		WEDD M.
		WELLS B.
		WILKS
		WILKS

(38) (55)



Also referred to as **Exhibit 35** and **Exhibit 35A** in the course of the Inquiry.

Also referred to as **Exhibit 35** and **Exhibit 35A** in the course of the Inquiry.



# Attachment 5 — Exhibit 13B

Also referred to as **Exhibit 13** and **Exhibit 13A** in the course of the Inquiry.

MOONEY		
Solid		Likely
X Anderson, Pam		Alloway N
Boulton, Ian		Alloway G
Bowen, Mark		Anthony J. AJK to see
Brown, Staff		<u>Barnard R.</u>
Bull, Noel		Bowerman G.
Campbell, Shane		Bowerman D.
<u>Casey B.</u>		Bowerman D. Snr
Chambers D.		Braddick P.
Colbran G.		Carroll K.
Collett G.		Casey G.
Cox V.		Cox B.
Cox N.		Benson D.
Crowley M.		Gleeson
Daley B.		Gleeson
Dyer S.		Goldfinch
Filmer H.		Goldfinch
Gear J.		Gough J.
Herron D.		Groves D.
Jones K.		Harding J.
Langdon J		Hardy D.
<u>Lewis P.</u>		Hardy J.
Lindsay Ted		Hardy D.
Lindsay E.		Hite R.
McArthur J.		<u>Landers</u> 14/1
McKenzie D.		<u>Landers</u>
McMahon K.		Mitchell J.
McNally T.		Pass M.
Melvin R.		<u>Pass N.</u>
Newman S.		Pelling B.
Newman E.		Ryan, Jessie
<u>Nichol A.</u>		Ryan, Kevin
O'Connor I.		Shand A.
Ryan N.		Turner I.
Schmidt J.	<u>Kimber Merv</u>	<u>Tweedie</u>
Sharma	<u>Belaw-Echth</u>	<u>Tweedie</u>
Sharma	<u>Butler-Hen</u>	Walker B
Smith D.	<u>Butler-Beth</u>	Wallis C.
Smith G.	<u>Wilson Stane</u>	
Tinnetti B.	<u>Brown Kerry</u>	
Wilson S.	<u>Keeper Pat.</u>	
Wode T.	<u>Keeper Edna</u>	
Total: 41	48	

- Wallis F.
- Watson H.
- Watson P.
- Wedge M.
- Wicks B.
- Weeks B.
- Williams B.
- Wilson H.
- Wilson M.

Total: 46

Beth Thorne P.

Newman



## Attachment 6 — Exhibit 13C

Also referred to as **Document A** in the course of the Inquiry.

MOONEY SOLD T

Boulton  
Mark Bowen  
Staf Browne  
Noel Bull  
Shane Campbell  
Bob Casey  
Daniel Chambers  
George Colbran  
Gordon Collett  
Vi Cox  
Norrie Cox  
Matt Crowley  
Barb Daley  
Steve Dyer  
Helen Filmer  
John Gear  
Karen Jones  
Jaymin Langdon  
Peter Lewis  
Ted Lindsay  
E Lindsay  
J McCarthur  
D Mc Kenzie  
K McMahon  
T McNally  
R Melvin  
S Newman  
E Newman  
A Nichol  
I O Connor  
N Ryan  
J Schmidt  
Sharma  
Sharma  
D Smith  
Smith  
Tinnetti  
Goldfinch  
Goldfinch  
Jim Bunnell  
Ann Bunnell  
Jane Jansen  
Ron Lambert  
E Belen  
Butler A  
Butler B  
Steve Wilson  
Kerry Brown  
Pat Kepper  
Ernie Kepper

TRANS

A Foy  
H Bond  
J Jones  
A McDonald  
G Hogg  
D Cutuli  
T Willshire  
L Clark  
L Bushach  
T Wade  
A Ols  
G Airdridge

Rick Croft  
Chris Gotch  
Dave McKenzie

## Attachment 7 — Exhibit 13D

Also referred to as **Document B** in the course of the Inquiry.

	581134 014 445 821.
Baultain	LOT 1, HOWARD ST H/BAY MGR IS
2/58 look Langdon	
2/58 look D Ma Donald	
Bull	
D McKenzie P	
Chambers	2/58 LOOK ST N WARD.
AOLG 716 745	6 SEVEN 72 TRANSOME

## Attachment 7A — Exhibit 13D

The back of Attachment 7.





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Dancers. Live Entertainment all Afternoon, plus...

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in Town! \$5000 in PRIZES*

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at Stockland Townsville or the Sheraton Breakwater Casino-Hotel.

  
**Sheraton Breakwater**  
CASINO - HOTEL  
TOWNSVILLE  


BULLETIN SAT. 12-10-96



## Attachment 8 — Exhibit 67

Also referred to as **Document C** in the course of the Inquiry.

- |                    |                     |
|--------------------|---------------------|
| 1 / Boulton /      | 21 Leah Baker /     |
| 2 N Bull /         | 22 A Ole. /         |
| 3 D Chambers /     | 23 Andy McDonald. / |
| 4 M. Cowley /      | 24 John JONES /     |
| 5 Karen Tanso /    | 25 Nedie RYAN /     |
| 6 Joymin Langdon / |                     |
| 7 J Schmidt /      |                     |
| 8 Jane Tanso /     |                     |
| 9 Foy /            |                     |
| 10 H Bond /        |                     |
| 11 D Cutuli /      |                     |
| 12 Les Clark /     |                     |
| 13 L. Bushack /    |                     |
| 14 G. Albridge /   |                     |
| 15 R Croft /       |                     |
| 16 Chms Gotch /    |                     |
| 17 Dave McKenzie / |                     |
| 18 New Kimber /    |                     |
| 19. Nida Boyd /    |                     |
| 20 K. Brown /      |                     |

## Attachment 9 — Exhibit 68

Also referred to as **Document D** in the course of the Inquiry.

19.7.97 112 109  
 117 5  
 129 114 77. (29)

<del>John Allen</del>	BOND
Merr Kimber	CHAMBERS
Leanne Buchanan	MACDONALD
Leslie Clark	G. A. DRIDGE
Jane Hansen	J. JONES
<del>D. ACKENZIE</del>	N. RYAN
<del>K. BROWN</del>	<del>K. KERR</del>
<del>J. SCHMIDT</del>	<del>K. KERR</del>
<del>J. LAIRD</del>	
<del>C. COOPER</del>	
<del>A. CROWLEY</del>	<u>D. LUNNEY</u> 17 Merton Tce
<del>A. FOOT</del>	
<del>L. BAKER</del>	

Pamela HIRNIN	11/33 THE STRAND NTH WARD	PO BOX 188/ROSEMERE
Amanda HIRNIN	11/33 THE STRAND NTH WARD	PO BOX 6137
Rodney WITTENBERG	6 STIMSON CROSS NTH WARD	PO BOX 6137
Jenny LYONS	18/23 GREGORY ST NTH WARD	PO BOX 6137



Also referred to as **Document E** in the course of the Inquiry.

Also referred to as **Document E** in the course of the Inquiry.



## Attachment 11 — An historical context

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In *Rogers on Elections* (1928, p. 387), Williams says:

The question of agency is one of the most important that can arise in election inquiries. It is to conceal agency, and so to relieve the candidate from the consequences of corruption practised on his behalf, that the efforts of unscrupulous men engaged in the conduct of an election have been generally directed, and it is not too much to say that an election inquiry has been more frequently baffled from a failure in the proof of agency than from all other causes put together.

The above words were published in 1928 (and probably earlier — I have not obtained any earlier edition of the text). The words may be thought applicable to certain matters before the present inquiry.

The author then went on to discuss the Corrupt and Illegal Practices Prevention Act 1883 (46 & 47 Vict c51) (UK), which contained provisions for the appointment of an election agent and his subagents who, in addition to the duties formerly incumbent on the agent for election expenses, had the sole power of appointing all polling agents, clerks and messengers and of hiring committee rooms on behalf of the candidate. Although these terms are now rather old fashioned, they indicate the range of matters to be dealt with by the agent in those times. The Act provided that the name and address of the election agent (who might be the candidate) and the names and addresses of all subagents had to be made public so that no question could arise as to the fact of agency in the case of any of them.

At page 388 in the same work, the author said this:

It is obvious that the principles of legal agency derived as they are from the transactions of private life cannot be applied with strictness to cases of electioneering agency. The candidate at an election professedly seeks an office of trust for the benefit of the public; the public, therefore, is the party mainly interested, nor is it too much to require that, in seeking to obtain such an office, the candidate should employ trustworthy agents and become responsible for their conduct. Besides, it is not to be expected that any express directions to bribe, treat, or unduly influence electors or any distinct recognition of such acts if done — such as would be required in an ordinary inquiry before a court of law — could usually be brought home to candidates. If the principles of agency, therefore, held by courts of law were not relaxed in the consideration of election petitions, the very object of the inquiry would be defeated.

The author then discussed the principles of agency as applied to elections and the way in which different judges in England had expressed them. I shall mention statements from some of these cases which, although old, are still cited in *Halsbury's Laws of England* and regarded in England as good law. These cases well illustrate the problems confronted and the rationale and principles of electoral agency.

(a) In *Norwich* (1869) 1 O'M&H 8 at 10, Baron Martin said:

Mr Justice Blackburn, Mr Justice Willes and myself unanimously came to the conclusion that any person authorised to canvass was an agent and it does not signify whether he has been forbidden to bribe or not. If the candidate had told him honestly 'do not bribe; I will not be responsible for it'; if bribery was committed, that bribery would affect him. Such is the opinion of Mr Justice Willes, Mr Justice Blackburn and myself. The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant notwithstanding the directions he may have given him.

(b) In *Blackburn Case* (1896) 1 O'M&H 198 at 201, Willes J said:

Nothing can be clearer than this law; it has existed for a very considerable period, I believe certainly from as early as the time of James I. Some 265 years

ago the general principle was laid down upon the first and only occasion upon which the jurisdiction of the House of Commons over Parliamentary Petitions was seriously questioned (Goodwins case, 2 State Trials 91), and upon which occasion it was confirmed ... that no matter how well the Member may have conducted himself in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter yet if an authorised agent of his, a person who has been set in motion by him to conduct the election, or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained;

I note that corrupt practice appears to have encompassed bribery, treating and undue influence.

- (c) In *Greenock Case* (1869) 1 O'M&H 247 at 251, Lord Barcaple in dealing with questions of agency, said:

I think there are three principles applicable to these kinds of matters. There is first of all, the strictest of all principles, that which is applicable to a criminal charge, and there you are responsible for nothing at all except your own individual guilt. That is a thing consistent with ordinary commonsense. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, and in which it is proved that the wrong was done by the defender's agent, that is to say, a person employed by the defender while he was doing the thing he was employed to do; but there comes in the principle that he was employed to do the particular work and that he was not employed to do the wrong. Then there is the third class of case with which we are at present engaged, where, in these election petitions, it being proved that a candidate is having his election carried on by a committee or certain canvassers, those canvassers do something which if the candidate is responsible for it will invalidate the election. And it is held that he is responsible for it in the sense of making the validity of the election depend upon it. I do not see how these election petitions would be of the least use otherwise, because I suppose there are very few candidates indeed who undertake the practice of corruption by their own hand.

Williams noted that this exposition of the law was approved by Blackburn J in *North Norfolk Case* (1869) 1 O'M&H 236 (page 240).

I mention now *The Ithaca Election Petition (Webb v. Hanlon)* (1939) St.R.Qd 90 where, on appeal, the petitioner failed to satisfy the majority of the Full Court of the Supreme Court of Queensland that two persons who committed illegal practices were agents of the candidate who was a respondent to the petition. In this case, as I shall shortly mention, the Chief Justice, Mr Justice Blair, referred to Queensland's elections law having followed English law in respect of corrupt practices and illegal practices.

The judgment of Blair CJ — one of the majority — shows that in that case a vital section in the *Elections Act 1915–1936* was section 126, which read:

If upon the trial of a petition the Judge reports that any illegal practice is proved to have been committed in reference to such an election by or with the knowledge and consent of any candidate at such election, that candidate shall not be capable of being elected to or sitting in the Assembly for that district for three years next after the date of the report, and if he has been elected his election shall be void.

He shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.

The reference to 'report' is a reference to a report by the judge sitting as the Elections Tribunal upon the trial of a petition.

Blair CJ held that the proper construction of section 126 necessitated proof that an illegal practice had been committed by the candidate or by the agent of the candidate with his knowledge and consent (see page 135). I should at this stage say that section 126 dealt with 'illegal practice' and not a 'corrupt practice' — the distinction is important. If it had been a corrupt practice proof of knowledge by the candidate was not required and the candidate was penalised.

'Corrupt practice' was defined in section 5 of the *Elections Act 1983–91*. The

distinction between corrupt practice and illegal practice has not been maintained in the *Electoral Act 1992*. At page 136 of *The Ithaca Election Petition Report*, Blair C J spoke of this distinction. He said:

The distinction between a corrupt and an illegal practice is that there must be in the person guilty of the act complained of a corrupt intention. A corrupt practice is a thing the mind goes along with; an illegal practice is a thing the Legislature is determined to prevent whether it is done honestly or dishonestly (Field J in *Barrow-in-Furness Case* (1886) 4 O'M & H.76 at p. 77).

The *Elections Act 1915–1936* has been repealed and its successor the *Elections Act 1983–1991* was repealed by the *Electoral Act 1992*.

The *Electoral Act 1992* refers to agent only in the area of electoral funding and financial disclosure (see Part IV of that Act). Nowhere in this Act is there any provision concerning appointment by the candidate of an agent for any other purpose.

I pause to say that I noted that the *Commonwealth Electoral Act 1918* contains 'Part XX — Election Funding and Financial Disclosure'. This part contains quite detailed provisions for appointment of agents by candidates and groups of candidates (see, by coincidence, section 289), but such appointments are 'for the purposes of this Part'.

Those purposes also concern Election Funding and Financial Disclosure and relate to Commonwealth matters including House of Representatives and Senate elections.

The Commonwealth Electoral Act does not contain any provision concerning appointment by the candidate of an agent for any other purpose.

In marked contrast to both Queensland and Commonwealth Acts, the present English legislation — the Representation of the People Act 1983 as amended by the Representation of the People Act 1985 and subsequent legislation (all of which I shall call 'the RP Act') — contains quite detailed provisions concerning 'the election agent'. (See Part II of the RP Act — The Election Campaign).

I note that Part I of the RP Act 1983 is headed 'Parliamentary and Local Government Franchise and its Exercise.'

The obligations of the election agent under the RP Act are not limited to electoral funding or financial expenses as is the case under the Queensland and Commonwealth Acts. As *Halsbury's Laws of England* (para. 611) says (citing section 158(3)(b) of the RP Act):

The election agent must take all reasonable steps for preventing the commission of corrupt and illegal practices at the election.

I suggest that the doctrines of electoral agency as explained in the earlier English cases to which I have referred and in the passage from *Halsbury's Laws of England*, to which I shall shortly refer and which at present appear not to apply in Queensland, should, by Act of the Queensland Parliament, be made to apply in the case of electoral inquiries including electoral petitions before the Court of Disputed Returns. (The Commonwealth Parliament may also wish to apply the doctrine of electoral agency to elections for the House of Representatives and the Senate.)

In paragraph 616 of *Halsbury's Laws of England*, the authors discuss 'candidate's liability':

A candidate's liability to have his election avoided under the doctrines of election agency is distinct from and wider than his liability under the criminal or civil law of agency. **Once the agency is established a candidate is liable to have his election avoided for corrupt or illegal practices committed by his agents even though the act was not authorised by the candidate or was expressly forbidden. The reason for this stringent law is that candidates put forward agents to act for them; and if it were permitted that these agents should play foul, and that the candidate should have all the benefit of their foul play without being responsible for it in the way of losing his seat, great mischief would arise. In this respect the relationship between candidate and agent resembles that of employer and employee. Other comparisons of the relationship between candidate and agent**

**that have been made are that between the sheriff and his bailiffs, or that of a yachtsman who is responsible in a yacht race for the conduct of every person who is on board his vessel or that of the owner of a race horse and the jockey he employs.** [my emphasis]

An agent may be employed to act generally or in some particular transaction. Similarly, a canvasser may be employed to canvass only particular voters. A candidate's liability for corrupt or illegal practices committed by such an agent is limited to acts within the agent's authority and thus if a canvasser is employed to canvass particular voters his illegal acts in respect of other voters will not affect the candidate. An agent may turn an innocent act into a guilty act by the manner of his doing it.

## Attachment 12 — Extracts from the *Elections Act* 1915–1936

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121. **Evidence of corrupt practices, how received.**— On the trial of a petition or reference, unless the Judge otherwise directs, any charge of a corrupt practice may be gone into and evidence in relation thereto may be received before any proof has been given of agency on the part of any candidate in respect of such corrupt practice.
122. **Elections Judge to make report in case of corrupt practice.** — Where a charge is made in a petition of any corrupt practice having been committed at the election to which the petition relates, the Judge shall, in addition to the certificate hereinbefore mentioned and at the same time, report in writing to the Speaker as follows:—
- (a) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, and the nature of such corrupt practice;
  - (b) The names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt practice;
  - (c) Whether corrupt practices have, or whether there is reason to believe that corrupt practices have, extensively prevailed at the election to which the petition relates.

The Judge may at the same time make a special report to the Speaker as to any matters arising in the course of the trial, of which, in his judgment, an account ought to be submitted to the Assembly.

123. **Assembly to carry out report.**— The Assembly, on being informed by the Speaker of any such certificate and report or reports, if any, shall order the same to be entered in their journals, and shall give the necessary directions for confirming or amending the return, or for issuing a writ for a new election, or for carrying the determination into execution, as circumstances may require.
124. **Candidate found, on petition, guilty personally of corrupt practices.**— If upon the trial of a petition the Judge reports that any corrupt practice other than treating or undue influence has been proved to have been committed in reference to such election, by or with the knowledge and consent of any candidate at such election, or that the offence of treating or undue influence has been proved to have been committed in reference to such election by any candidate at such election, that candidate shall not be capable of being elected to or sitting in the assembly for the period of three years, and if he has been elected his election shall be void.
125. **Candidate found, on petition, guilty by agents of corrupt practices.**— If upon the trial of a petition in which a charge is made of any corrupt practice having been committed in reference to an election the Judge reports that a candidate at such election has been guilty by his agents of any corrupt practice in reference to such election, that candidate shall not be capable of being elected to or sitting in the Assembly for such district during the Parliament for which the election was held, and if he has been elected his election shall be void.
126. **Connivance of candidate at illegal practice.**— If upon the trial of a petition the Judge reports that any illegal practice is proved to have been committed in reference to such an election by or with the knowledge and consent of any candidate at such election, that candidate shall not be capable of being elected to or sitting in the Assembly for that district for three years next after the date of the report and if he has been elected his election shall be void.

He shall further be subject to the same incapacities as if at the date of the report he had been convicted of such illegal practice.



**127. Report exonerating candidate in certain cases of corrupt and illegal practice by agents.**— When upon the trial of a petition the Judge reports that a candidate at such election has been guilty by his agents of the offence of treating and undue influence and illegal practice, or of any of such offences, in reference to such election, and further reports that the candidate has proved —

- (a) That no corrupt or illegal practice was committed at such election by the candidate himself and the offences mentioned in the said report were committed contrary to his orders and without his sanction or connivance;
- (b) That such candidate took all reasonable means for preventing the commission of corrupt and illegal practice at such election;
- (c) That the offences mentioned in the report were of a trivial, unimportant, and limited character; and
- (d) That in all other respects the election was free from any corrupt or illegal practice on the part of the candidate,

then the election of such candidate shall not, by reason of the offences mentioned in the report, be void, nor shall the candidate be subject to any incapacity under this Act.

**128. Power of Tribunal to except innocent act from being illegal practice.**— When it appears to the Tribunal that any act or omission of a candidate at any election, or of his agent or of any other person, which would, by reason of being a payment, engagement, or contract in contravention of this Act or ‘The Criminal Code,’ or of otherwise being in contravention of this Act or ‘The Criminal Code,’ be but for this section an illegal practice, payment, or hiring, arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the Tribunal to be just that the candidate and the agent and other person, or any of them, should not be subject to any of the consequences under this Act of such act or omission, the Tribunal may make an order allowing such act or omission to be an exception from the provisions of this Act which would otherwise make the same an illegal practice, payment, or hiring, and thereupon such candidate, agent or person shall not be subject to any of the consequences under this Act of the said act or omission.

All these sections appear in PART VIII — ELECTIONS TRIBUNAL of the 1915–1936 Act.

## Attachment 13 — *The Review of the Elections Act 1983–1991 and Related Matters*

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EARC was established by the *Electoral and Administrative Review Act 1989–1990* (EARC Act) as a result of a recommendation made by the Fitzgerald Report.

In December 1991, EARC published an interim report (in two volumes) entitled *The Review of the Elections Act 1983–1991 and Related Matters*. This Review resulted in the draft Electoral Bill 1992, which became the *Electoral Act 1992*.

The Review was done in four stages. Leading to the Review, EARC published draft issues papers, one of which issues read (see para 2.11 of the Review.):

### **Prevention of Electoral Fraud**

All possible steps should be taken to eliminate electoral fraud. Penalties for electoral offences should be set at levels which discourage fraud.

The Review included a draft bill for an Electoral Act ‘Electoral Bill 1992’. A reading of the Review shows that in 1991 EARC had before it a document called — ‘Inquiry Into the Operations and Processes for the Conduct of State Elections 1989 in New South Wales’ — also known as the Cundy Report (paragraph 7.48 of the Review). In paragraph 7.48 the matter of roll-stacking was mentioned when discussing ‘Electoral Timetable’ and ‘close of rolls’ (see paragraph 7.48 of Review). Paragraph 7.48 also contained a quotation from a submission received from the Department of Justice and Social Services which in part said:

The effective protection against roll-stacking arises in a number of ways. First, normal administrative arrangements will show up doubtful enrolments within a few weeks and well before the return of writs.

Secondly, evidence of this nature would lead automatically to a Court of Disputed Returns.

The Department of Justice is not aware of any post-war election that was perverted by roll stacking. It is aware, however, of a very substantial impact on outcomes rising from restrictions on the franchise, and more recently from confusion about the method of registering a formal vote.

The second point would only be true if the evidence were known in time to petition the Court of Disputed Returns.

In paragraph 7.50 of the Review, when discussing ‘close of rolls’, the Review again referred to the Cundy Report and quoted:

Enquiries undertaken by the Committee have revealed very little evidence of fraudulent enrolment but it must be recognised that it could occur to the detriment of the democratic process.

The Review continued:

Preventing fraudulent enrolment under the existing system is extremely difficult if not impossible. A person merely has to complete an electoral enrolment form in the presence of a witness and forward it through the post to the Divisional Returning Officer. No specific proof of identity is required.

While the Committee did not discover any factual cases of fraudulent enrolments for the purpose of influencing the result of an election, the possibility appears to be of concern to some of those who made submissions to the Inquiry. **The possibility of moving ‘blocks’ of electors from one electorate to another to influence the result of an election was seen by some to be a possibility but no evidence of it actually happening was produced.** [my emphasis]

The State Electoral Office is aware of several cases where false enrolment has

been effected for mischievous reasons but there is no evidence to suggest that this practice is widespread. A case has also come under notice where a change of address was attempted by an elector in the period immediately prior to a recent by-election. It was detected by an alert Divisional Returning Officer who was aware that the address given was a business, not residential address. It is understood that in this case charges have been laid under the CE Act.

The Review, Volume I at paragraph 7.51, went on:

However, in its introduction the Cundy Committee of Inquiry Report (pp. 8–10) noted:

That the electoral system as it presently exists is open to manipulation is beyond question but the deliberate perpetration of electoral fraud on a major scale is much less certain. In fact there is no real evidence that it has been practised to the extent that it has affected the result in any electorate.

Over the years the public's confidence in the electoral system has been eroded due largely to misinformation which is peddled in the media and otherwise and to lack of information as to the checks and balances which do exist. The Committee's view is that, generally speaking, it is the public's perception rather than the reality which influences its opinion.

I regret to say that following the revelations made in the present Inquiry in the years 2000–2001, the public's perception must be that in Queensland electoral fraud has been deliberately perpetrated on a significant scale in the areas covered by this Inquiry's terms of reference. Indeed there is before me evidence that fraudulent enrolments on the electoral rolls had occurred in Queensland at least as far back as 1986. Although it may fairly be said that the majority of the fraudulent enrolments resulted in persons using the false enrolments in order to vote in internal Party elections in which only Party members participated as opposed to general elections in which all members of an electorate eligible to vote participate, this outstanding fact remains — fraud was practised on the voting public because of the false enrolments on public documents — the electoral rolls. As a result of the false enrolments on the electoral rolls certain persons unlawfully became eligible to vote in a particular electorate or ward at a general election and the evidence shows that some of these persons in fact did so. Those cases, although threatening the fairness of an election, may have affected the result of the election, but there is no evidence that such threat to a result became reality.

I should, I think, add a reference to paragraph 7.53 in the Review because it shows that at that stage EARC was concerned with 'close of the rolls' and what it called 'roll-stacking':

Moreover, the question remains why, if there are conspirators who seek to subvert democratic elections by roll stacking, they would not act prior to the issue of the writ. Unless there is a premature dissolution of the Parliament, there would be ample time, and the proposition that false entries could be discovered with more time is unrealistic. The remaining evidence suggests that protecting the right to vote is more important than guarding against the very remote possibility that the rolls might be stacked.

I regret to say that well within the last 10 years the possibility that rolls might be stacked has moved far from being 'very remote' to being fact. Of course, at the time of the report (1991) EARC was unaware of the illegal roll-stacking that occurred in 1986 in the South Brisbane plebiscite.

What is said in the above paragraph 7.53 does not apply to an internal ballot within the ALP where there are time limits imposed and where one criterion for eligibility to vote in the ballot is that the would-be voter be enrolled on the electoral rolls for a particular electorate or ward.

Chapter 13 of the Review 'Disputes and Petitions' considered the then situation in which, under the *Elections Act 1983–1991*, a single judge of the Supreme Court of Queensland, sitting as the Elections Tribunal, heard disputes and petitions resulting from elections. EARC, in its Review, recommended abolition of the Elections Tribunal and replacement by a single judge of the Supreme Court sitting as the Court of

Disputed Returns. A draft bill was attached to the Review and this draft bill was substantially adopted by Parliament and became the *Electoral Act 1992*. In Chapter 13 of the Review, EARC had earlier said:

- 13.1 In Chapter Two a set of principles to underlie the provisions of new Queensland electoral legislation was recommended. These included principles to ensure that Queensland electoral law and its administration would be open, honest and deliver election results corresponding to the intentions of electors expressed through the ballot-box.
- 13.2 Apart from the prescription of electoral offences and penalties to deter those who might attempt to affect election outcomes illegally, there must be avenues for challenging the results of elections where there are concerns that unlawful practices have been employed or official mistakes have been made.

In Chapter 13 of the Review, EARC considered the laws of the States of Australia and the Commonwealth on the matter of disputes and petitions concerning results of elections, but it appears may not have considered the laws of England. I mention this aspect because in *The Ithaca Election Petition* (at page 124) Chief Justice Blair said:

Our elections law has followed the English situation with respect to corrupt practices by candidates and by candidates' agents, and with reference to illegal practices committed by the agents of a candidate with his knowledge and consent, but liability for an illegal practice by an agent without such knowledge and consent has been deliberately omitted from our elections law. In other words, we make corrupt practices by a candidate a ground for avoiding an election but we do **not** make an illegal practice by an agent of a candidate such a ground unless the illegal practice is committed with the knowledge and consent of the candidate. Without such knowledge and consent, section 126 does not invalidate the election nor does it punish the candidate.

The Chief Justice's reference to the then Queensland law following the English law was understandable. The decision of Mr Justice E A Douglas sitting as the Elections Tribunal from which the appeal was brought, refers to English election law and indeed, refers to the textbook *Rogers on Elections*, page 399 (see (1939) St.R.Qd p. 97). I note that in the *Elections Act 1915–1936* — the statute under consideration in the *Ithaca Election Petition* — sections 124, 125 and 126 provided that if any of these sections were complied with the relevant candidates' elections should be void.

In *The Ithaca Election Petition* the Court was concerned with section 126.

The *Election Act 1915–1936* defined 'corrupt practice' as:

Any of the following offences — namely treating, undue influence, bribery, and personation, as defined by *The Criminal Code* (see s. 4).

'Illegal practice' was not defined in the 1915 Act, but was defined in subsections 105 and 106 of the Criminal Code of Queensland, which sections appear in Chapter 14 — Corrupt and Improper Practices at Elections.

The *Elections Act 1915–1936* and its successor the *Elections Act 1983–1991* distinguished between corrupt practices and illegal practices. It will be noted that throughout sections 121–128 of the 1915 Act these distinctions are maintained (e.g. sections 121, 122, 124 and 125 specifically refer to 'corrupt practice', section 126 refers to 'illegal practice' and section 127 refers to certain corrupt practices and to illegal practice). The differing sanctions imposed for breaches of the sections show the importance of the distinctions.

Both sections 125 and 127 refer to a candidate being reported as guilty of corrupt practice by his agents.

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**Note:** Most of the CJC's publications since November 1997, as well as annual reports and strategic plans, are available on [www.cjc.qld.gov.au](http://www.cjc.qld.gov.au). Copies of publications still in print may be had through contacting the CJC. Some out-of-print publications may still be available on the CJC website or through libraries. This list does not include confidential reports and advices to Government or similar.

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