

VICTORIA

Royal Commission on

**THE ACTIVITIES OF THE FEDERATED
SHIP PAINTERS AND DOCKERS
UNION**

Interim Report No. 4, Volume 1

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The Government of The Commonwealth of Australia
and
The Government of The State of Victoria

ROYAL COMMISSION ON THE ACTIVITIES OF THE
FEDERATED SHIP PAINTERS AND DOCKERS UNION

Commissioner: Mr. Frank Costigan, Q.C.

Interim Report No. 4

27 July, 1981

Your Excellency,

In accordance with Letters Patent dated 10 September 1980, I had the honour to present in March, July and December 1981, Interim Reports of the Royal Commission into the Federated Ships Painters and Dockers' Union.

I now have the honour to present to you a further Interim Report of the Royal Commission.

I have the honour to be sir,

Your Excellency's most obedient servant,

Frank Costigan
Commissioner

His Excellency Sir Zelman Cowen,
A.K., G.C.M.G., G.C.V.O., K.St.J., Q.C.,
Governor General and Commander-in-Chief,
Governor House,
CANBERRA, A.C.T., 2600

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His Excellency Rear Admiral Sir Brian Murray,
K.C.M.G., A.O., K.St.J.,
Governor of Victoria,
Government House,
MELBOURNE, Vic., 3000

INTERIM REPORT NO. 4

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CHAPTER ONE

INTRODUCTION

1.01 The Commission has already delivered three Interim Reports: The First in March 1981, the Second in July 1981, and the Third in December 1981. During the first half of 1982 the Commission has maintained the thrust of its investigations. It has continued to sit on a regular basis. Many of the hearings have been in public but a large number have been confidential. A very large number of additional documents have been and are being acquired including a semi-trailer load from Sydney and a container load from another source which I prefer not to disclose publicly.

1.02 Information obtained during these confidential hearings and from these documents is both revealing and disturbing.

1.03 The Commission is now in possession of almost two million pages of documents, all of which will need some attention. The Commission has found that the more information it acquires the more the pieces of the jigsaw are fitting into place. In addition, evidence acquired in respect of one area of investigation seems to lead almost inevitably into another area. Often this other area is an area which has previously been identified in passing but takes on a greater significance in the light of the additional information. The result is that the scope of the Commission's enquiries, though all undoubtedly within its terms of reference, seem to be expanding weekly.

1.04 I think I should say something about the range of the Commission's enquiries. As I indicated in the Third Interim Report the Commission, to the surprise of many, found itself investigating the tax evasion industry. Such investigation arose from its discovery of the use being made of painter and dockers by the promoters of tax schemes. In turn this has identified the benefits made available by the union to a wide range of people. A proper understanding of the role played by the union and its members has required me to explore areas which on the surface would not be expected to be associated with the union. To follow this course seems to me the only efficient and thorough way to understand with accuracy the operations of the union. That this method is appropriate and clearly within the terms of reference has been accepted by four judges of the Federal Court in the case of HEAP & ROSS v COSTIGAN (as yet unreported). That particular case was concerned with an application by the two persons for an injunction to stop the Commission pursuing its investigations into the area of taxation fraud. The Federal Court (Ellicott J) and the Full Federal Court on appeal held that the Commission's investigations were within its terms of reference. During the course of this litigation on 1 April 1982 fresh Letters Patent were issued to me supplementing and clarifying my original terms of reference. The most significant aspect of these new terms was the definition of illegal activities so as to include any activity involving any breach of a law of the Commonwealth or a Territory, or, in relation to trade and commerce between Australia and places outside Australia or among the States or between a State and a Territory, any activities which are contrary to a law of the Commonwealth, a State or a Territory.

1.05 Subsequent to my Third Interim Report, section 16 of the Income Tax Amendment Act was amended to allow me access (under conditions) to taxation files. I will refer to this matter in detail in Chapter 2.

1.06 It seems to be appropriate accordingly that I should now report on the present state of the Commission's enquiries. This Report will have two functions; firstly to inform Government as to the areas in which the Commission is working and the conclusions, in some cases tentative, that the Commission is reaching; and secondly to enable Government to have before it sufficient information for it to make a proper judgement on the future course which it desires the Commission to take.

1.07 I propose to make this Report in two parts. The second part will deal broadly with the current and projected areas of investigation. It will necessarily deal with some matters which are at the moment the subject of police investigation and the disclosure of those investigations might at this stage prove harmful. Moreover, as in my first two Reports, I have felt it desirable that I should speak frankly about various matters where on occasions the persons about whom I speak have not yet had the opportunity to make any submissions to me as to conclusions I should draw. For both these reasons it seems to me that the second part of the Report should not be made public at this stage.

1.08 The first part of the Report will deal with the matters which it seems to me are not affected by either of the considerations which affect the second part. Some of the matters dealt with in the first part of the Report have already been adverted to in previous

Reports. This is particularly so in relation to the violent history of the union. If that part is made public the readers of it of course will not have access to the earlier Confidential Reports. I have therefore incorporated in that part of the Report a good deal of material which appeared in earlier Reports so that the document can be read as a whole without reference back to the earlier Reports.

1.09 It will be obvious, I believe, when reading the Report that it will not be possible for the Commission to complete its task by the end of this year. Indeed if the present time limit is maintained, and bearing in mind that the last few months of the Commission's present life would be devoted to a comprehensive and final Report, it is unlikely that the Commission would be able to do more than complete one of its many current investigations. A number of the areas mentioned in the second part of the Report are clearly of major significance and concern to Government and the community. It is clear that continued investigation must take place whether by this Commission or by some other body.

1.10 My past three Reports have been delivered to the Commonwealth and Victorian Governments in precisely the same form. There was good reason for this. I was dealing with matters arising under both Commissions. Even though it was possible to identify certain matters which may specifically come under one Commission rather than the other, the information obtained led to a better understanding of the total picture. A good example is the Williamstown Naval Dockyard. This is a Commonwealth operation. Yet an investigation of events occurring there involved necessarily the methods of provision of

painter and docker labour from the union office in Lorimer Street; both Commissions were involved. Again, the investigation of taxation fraud involved painters and dockers in various states; although the focus was on a fraudulent attack on Commonwealth revenue the investigation ranged beyond it, and covered breaches of both Commonwealth and State law.

1.11 In the case of this Report, however, I have a special problem. I have referred to it in Chapter 2. The Report which I deliver to the Government of Victoria does not include Chapter 3. I cannot include it because of the provisions of Section 16 of the Income Tax Assessment Act. All the other chapters of the Report are identical.

1.12 There are a number of recommendations which I wish to make at this stage. It is useful I believe to set them out together in this chapter.

(a) Amendments to section 16 of the Income Tax Assessment Act

I have discussed the operation of this section in Chapters 2 and 3 of this Report. For the reasons set out in those chapters it is my recommendation:

1. That section 16 be amended so as to allow the Australian Taxation Office to brief the Treasurer and the Attorney General fully, and in such detail as may identify taxpayers, and information supplied by them to the Taxation office. This may be readily achieved by the repeal of sub-section

5A of section 16, and the addition of each Minister to the list of authorised recipients of information in sub-section 4.

2. That section 16 be amended so as to allow Royal Commissions who are given access to taxation files to use the information obtained publicly despite the fact that individual taxpayers may thereby be identified.
3. That all law enforcement agencies be allowed access to information in possession of the Australian Taxation office for the purposes of criminal investigation.

This may be effected by the addition of Chief Commissioners of Police of each Police Force and the Commissioners of Corporate Affairs in each State to the list of authorised recipients in sub-section 4 of section 16.

4. That a taxpayer be entitled to access to information he has conveyed to the Australian Taxation office.

This may be effected by the addition of taxpayers to the list of authorised recipients in sub-section 4 of section 16.

5. That information supplied by a taxpayer to the Australian Taxation office be available on subpoena issued by any Court in Australia on it being relevant to any civil or criminal proceeding before the Court.

This would require the repeal of sub-section 3 of section 16, and the addition of Courts of law to the list of authorised recipients in sub-section 4 of section 16.

(b) Task Force

It is my recommendation that a Task Force be formed consisting of Counsel, Solicitors, investigators and administrative staff to act on behalf of the Commonwealth and the several States in the criminal and civil actions available to punish those who have perpetrated the fraud, and to recover the revenue lost.

(c) Search Warrant

It is my recommendation that a Royal Commissioner should have the power to issue a search warrant where he believes on reasonable grounds that a person has documents relevant to the terms of reference of the Commission and there is a reasonable likelihood of the destruction of the documents. There are cases where the mere service of a subpoena to produce

documents will, if the person has something to conceal, result in the destruction and non production of the documents. The subpoena in fact acts as a warning to such a person of the Commission's interest. I would expect that such a power would be exercised only on rare occasions, but it should be there.

(d) Compulsion of witnesses

The Royal Commissions Act has quite inadequate powers and penalties to enforce the attendance of witnesses and the answering of questions. The Victorian Evidence Act in contrast provides efficient and speedy methods.

It is my strong recommendation that the Royal Commissions Act be amended to provide procedures and remedies similar to those in the Evidence Act. Recourse to the Federal Court would be appropriate.

CHAPTER TWO

SECTION 16 OF THE INCOME TAX ASSESSMENT ACT

2.01 In my third Interim Report I recommended that Section 16 of the Income Tax Assessment Act be amended so as to allow this Commission access to records held by the Australian Taxation Office. That recommendation was considered by Government and Section 16 was amended so as to allow me conditional access. It is no secret that the Australian Taxation Office opposed the amendment of Section 16 and mustered arguments in support of its opposition. It is only proper that I should record that, once the access was granted, the Australian Taxation Office has been extremely helpful in cooperating with the Commission and in facilitating in an administrative way the access granted to the Commission. It is also quite apparent to me, and I suspect to the Taxation Office, that the sensible way in which this cooperation has taken place has demonstrated the benefits to be obtained by the community and by Government in providing such access.

2.02 Nonetheless it seems to me that the access which was granted by the Income Tax Assessment Amendment (No 2) Act contained limitations which are not of assistance. To explain this let me set out the scheme of Section 16 as amended.

2.03 By Section 16(2) an officer as defined in the Act is prohibited except in the performance of his duty from divulging or communicating to any person any information acquired by him respecting the affairs of any other person. "Officer" does not include a Royal

Commission in respect of whom separate prohibitions are set out. By Sub-section 4 it is enacted that nothing in Section 16 shall be deemed to prohibit the communication by the Taxation office of information to a series of persons. The amending Act added to this sub-section a sub-paragraph (k) which enabled the Taxation office to disclose such information to my Royal Commission. There was then inserted in the Section eight new sub-sections 4A, 4AA, 4AB, 4AC, 4B, 4AB, 4C, 4CAD. These sub-sections are intended to provide a code for those Royal Commissions who have been provided with information by the Taxation office. They read as follows:

- "(4A) Subject to sub-section 4AA and 4AB, where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k)--
- (a) the Royal Commission may, in a manner that does not identify, and is not reasonably capable of being used to identify, the person to whom the information relates.
 - (i) communicate the information to the Governor-General in a report by the Royal Commission; or
 - (ii) divulge the information in the course of a proceeding conducted by the Royal Commission;
 - (b) the Royal Commission may communicate the information to the Attorney-General if the Royal Commission is of the opinion that the information indicates that a person may have committed an offence against an Act:
 - (c) subject to paragraphs (a) and (b), the Royal Commission shall not divulge or communicate the information except to a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the enquiry being conducted by the Royal Commission:

- (d) a person who has ceased to be the person constituting, or to be a member of, the Royal Commission shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
 - (e) a person to whom information has been communicated in accordance with paragraph (c) or this paragraph shall not
 - (i) while he is a person or employee under the control of the Royal Commission - divulge or communicate the information except to the Royal Commission or a person or employee under the control of the Royal Commission for the purposes of, or in connection with, the enquiry being conducted by the Royal Commission; or
 - (ii) after he ceases to be a person or employee under the control of the Royal Commission make a record of the information, or divulge or communicate the information, in any circumstances.
- (4AA) Where information respecting the affairs of a person is communicated to a Royal Commission in pursuance of paragraph (4)(k), nothing in sub-section (4A) prevents the communication of the information to -
- (a) if the person to whose affairs the information relates is not a company - that person;
 - (b) if the person to whose affairs the information relates is a company - any person who is, or has been, directly involved in, or responsible for, the preparation of information furnished to the Commissioner of Taxation on behalf of the company; or
 - (c) the person who furnished the information to the Commissioner of Taxation.
- (4AB) Where sub-section (4AA) permits the communication of information to a person, nothing in sub-section (4A) prevents the communication of the information to a barrister or solicitor appearing before the Royal Commission for the purpose of representing the person.

- (4AC) Where information is communicated to a person in accordance with sub-section (4AA) or (4AB), being information that was not furnished to the Commissioner of Taxation by the person and does not relate to the affairs of the person, the person shall not make a record of the information, or divulge or communicate the information, in any circumstances.
- (4B) Where information is communicated to the Attorney-General under paragraph (4A)(b) -
- (a) the Attorney-General may communicate the information to the Commissioner of the Australian Federal Police;
 - (b) subject to paragraph (a), the Attorney-General shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by the Attorney-General of his function under paragraph (a);
 - (c) a person who has ceased to be the Attorney-General shall not make a record of the information, or divulge or communicate the information in any circumstances; and
 - (d) a person to whom information has been communicated in accordance with paragraph (b) or this paragraph shall not -
 - (i) while he is a person or employee under the control of the Attorney-General - divulge or communicate the information except to the Attorney-General or another person or employee under the control of the Attorney-General for the purposes of, or in connection with, the performance by the Attorney-General of his function under paragraph (a); or
 - (ii) after he ceases to be a person or employee under the control of the Attorney-General - make a record of the information, or divulge or communicate the information, in any circumstances.

- (4C) Where information is communicated to the Commissioner of the Australian Federal Police under paragraph (4B)(a)
- (a) the Commissioner of the Australian Federal Police shall not divulge or communicate the information except to a person or employee under his control for the purposes of, or in connection with, the performance by that person or employee of the duties of his office or employment;
 - (b) a person who has ceased to be the Commissioner of the Australian Federal Police shall not make a record of the information, or divulge or communicate the information, in any circumstances; and
 - (c) a person to whom information has been communicated in accordance with paragraph (a) of this paragraph shall not -
 - (i) while he is a person or employee under the control of the Commissioner of the Australian Federal Police - divulge or communicate the information except to the Commissioner of the Australian Federal Police or another person or employee under the control of the Commissioner of the Australian Federal Police for the purposes of, or in connection with, the performance by the Commissioner of the Australian Federal Police of the duties of his office, or the performance by that person or employee of the duties of his office or employment, as the case may be: or
 - (ii) after he ceases to be a person or employee under the control of the Commissioner of the Australian Federal Police - make a record of the information, or divulge or communicate the information, in any circumstances.

- (4CA) A reference in sub-section (4A) to a person under the control of a Royal Commission includes a reference to -
 - (a) a barrister or solicitor appointed by the Attorney-General to assist the Royal Commission; and
 - (b) a person assisting a barrister or solicitor so appointed.

- (4D) A reference in sub-section (4B) to a person under the control of the Attorney-General includes a reference to -
 - (a) an officer of, or person employed in, the Attorney-General's Department;
 - (b) a person holding office, or employed, under an Act administered by the Attorney-General; and
 - (c) a person under the control of a person to whom paragraph (b) applies.

- (4E) A person to whom information is communicated under paragraph (4)(k) or under sub-section (4A), (4B) or (4C) shall not be required to divulge or communicate that information to any court."

2.04 When the Section was first placed before the Parliament sub-paragraph a(ii) had the word "public" qualifying the word "proceeding". I indicated to the Attorney-General's office that it seemed to me that such a qualification may well cause serious problems as it seemed to exclude the possibility of divulging information in the course of a confidential hearing. Consistent with the principle that no person should be identified in public by reference to such information, it seemed to me it was likely confidential hearings would be the normal method of obtaining such information and there should be no doubt left by the amendment that I was entitled to use the information in the course of confidential hearings. As a result of these discussions with the Attorney-General's Department the word "public" was

deleted from the first Bill. Unfortunately that deletion did not really deal with the problem I had been posing. There was, however, a great degree of urgency as Parliament was in its last week of sitting and any further consideration of possible amendments would have inevitably meant that the Bill would not have been passed prior to the Budget Session and I would therefore have been deprived of access at least until September. This would have posed very significant problems for the Commission.

2.05 The difficulty I see in the present wording of the Section is it considerably inhibits the investigative use that can be made of the information provided by the Taxation office. Let me give a theoretical example. Suppose as a result of my investigations in another area I become interested in the affairs of company X. Suppose further that I discern that the company has been involved in tax fraud and has made use of painters and dockers as its officers and directors. I find that no records of that company are to be found. I request information from the Taxation office in relation to returns submitted by the company and am informed that no returns have been lodged for the last four years despite numerous letters and notices sent to the registered office. This is information I have acquired from the Taxation office pursuant to my Section 16 access. By Section 4A I am prohibited from divulging or communicating the information except to a person or employee under the control of the Royal Commission or to the persons mentioned in sub-paragraphs (a) and (b) of that section. I would, however, wish to subpoena the officers and directors of the company to ask them, among other things, why no returns were lodged and whether for

example the failure to lodge returns was part of an overall scheme. I am unable to do so because of the prohibition. Section 4AA(b) does not help me because the persons I wish to question are not in fact persons who have prepared information furnished to the Commissioner of Taxation. No information was so furnished. Nonetheless the information I wish to use in my interrogation of these persons is information provided by the Taxation office and thereby protected by Section 16.

2.06 Let me give another example. Suppose I have before me a man in Melbourne. In the course of his evidence in public sessions he informs me on oath that he has lodged no taxation return. I obtain information from the Australian Taxation Office that he has in fact lodged a return. Perusal of the taxation file shows however a gross and deliberate understatement of income as a result of which he was forced to pay additional tax and a substantial penalty. This income is shown to have been obtained from a source central to my terms of reference. I would wish to press the witness on these matters. I cannot do so despite the provisions of section 4AA(a) because some of the information, concerned with the source of the additional income, relates to the affairs of some other person whose identity I am prevented from disclosing.

2.07 It seems to me there is a clear distinction to be made between confidential hearings and public hearings. A hearing described as a confidential hearing is so described because the Royal Commission has directed that the evidence taken at that hearing shall be confidential. It is accordingly a contempt of the Commission for any person including the witness to

divulge any information or any evidence disclosed in that confidential hearing. Proceedings in the Courts could be taken to deal with such a breach. It would also be a contempt if any newspaper were to publish confidential evidence. If this sanction is not felt to be sufficient there would be no difficulty in adding a sub-section to the Royal Commissions Act which made it a specific offence to so publish.

2.08 Moreover I believe that the restriction in relation to public hearings is also too wide. There must be a number of cases in which the use of information disclosed by the Taxation office should be able to be used in public session even though it is divulged in such a way as to identify the person to whom the information relates. Why should I not be able to ask in public session a company director why he has not lodged a taxation return when that information, acquired from the Taxation office, is only one small, though important, part of the total scheme which may already have been ventilated in public. I have discussed in Chapter 3 of this Report at length matters relating to a particular company and a particular promoter whose identities I am required to keep hidden because of the present state of the law. I hope the Chapter is a useful and understandable one. It would have been far more useful and intelligible if I was able to condescend to particulars and mention names. Moreover I would wish to call this particular promoter and some of the company directors to give evidence in public session. The connection with painters and dockers needs to be explored. The ability to examine this promoter without making use of the voluminous material I have been provided by the Taxation office will be a very serious constraint on a searching investigation.

2.09 The material contained in Chapter 3 itself provides a very good example of the unrealistic limitations imposed on me by the amendments. I hold commissions both from the Commonwealth Government and from the Victorian Government. I am entitled subject to restrictions to report to the Governor General on the matters contained in that chapter, vastly illuminated as they are by the material provided by the Taxation office. There is a good deal more material which I have in my possession which has been analysed. Such analysis I can disclose to the Taxation office. I cannot disclose it to the Government because it would identify the person in respect of whom the information relates. The Taxation office cannot disclose it to the Government because it is prohibited by Section 16. Furthermore, although it would be of great interest to the Victorian Government, and although the Reports to both Governments are in other respects identical, I am unable to include Chapter 3 in the Report handed to the Victorian Government because it includes material based on information supplied by the Taxation office. However, in my Report to both Governments I make recommendations as to the way in which the problems I have identified should be tackled. The Victorian Government is unable to assess the wisdom of the recommendations I have made, even though they involve that Government, because it is not provided with the information upon which those recommendations were based.

2.10 A further difficulty arises. Under Sub-section 4A(c) I am entitled to divulge information acquired from the Taxation office only to persons or employees under my control. I assume, I think correctly, that public servants seconded to the Commission are under my control for those purposes. There may be an argument to the

contrary. The meaning of control has been expanded by Section 4CA to include barristers or solicitors appointed by the Attorney-General to assist the Commission and persons assisting such lawyers. A problem can still arise. If for example information comes to me from the Taxation office about the affairs of a person in say Darwin which when added to other material obtained in other ways by the Commission makes investigation of that person a priority. I may wish to ask the Australian Federal Police to direct one of its officers in the Northern Territory to pursue investigations. For those investigations to be sensible such policeman would need to be provided with the material from the Commission including the material obtained from the Australian Taxation office. I have grave doubts as to whether that policeman can properly be described as being under my control for the purpose of this section. If those doubts are correct then I would be precluded from supplying to that officer part of the information which would be an integral part of the material upon which he would do his investigation. Such a limitation is not sensible.

2.11 I have raised these matters because although the access provided to me has indeed been valuable, it has become apparent that there are limitations on that access which do seriously impede the usefulness of it. To remove these restrictions would not in my view be contrary to the public interest. Indeed I would say positively that it would be to the public interest if some of the information I am acquiring from the Taxation office could be ventilated publicly.

(For the reasons set out in paragraph 1.11 of this Report I am unable to include in this Report to the Victorian Government Chapter 3. This Report will therefore continue with Chapter 4.

CHAPTER FOUR

THE STATION HOTEL

4.01 In an issue of The Bulletin magazine dated 9 February (but in fact published the week before) an article appeared with the headings "Its the Painters and Dockers Again" "Tax Rackets Lead to Death Threat". This article referred to events which had occurred at the Station Hotel, Port Melbourne, and resulted from an interview given by Mrs Cooper, the owner of the hotel, to a journalist employed by The Bulletin. As a result of the publication of the article the Commission called Mrs Cooper to give evidence in confidential session on 4 February 1982; on 8 February 1982 her evidence was taken in public. She appeared again before the Commission on 23 February 1982 and again on 1 July 1982. The story which emerged is not a happy one and reflects very badly on the union and its members. Let me relate it.

4.02 The Station Hotel is an attractive small corner hotel in the inner Melbourne suburb of Port Melbourne. It has been owned by Mrs Cooper and her family for some years. For a period the hotel was operated by a licensee but in March 1981 she and her brother took over its management. Her desire was to change the character of the hotel to accommodate the changing nature of Port Melbourne. Like other inner suburbs there were indeed changes taking place in the character of the neighbourhood. But Port Melbourne has always been, as its name implies, close to the port and docks of the city and still is and probably will remain the residence of many people including painters and dockers who are associated with the local industry.

4.03 Mrs Cooper and her brother slowly developed a regular clientele, on the whole from the new residents. Nonetheless a group of the older residents continued to patronise the hotel. Included in this group was a further group of some nine people identified by Mrs Cooper as being painters and dockers mainly employed at Duke & Orr's Dry Dock. During her previous period at the hotel, Mrs Cooper was familiar with many of the leading identities in the Painters and Dockers' Union.

4.04 In the second half of 1981, Mrs Cooper's hotel problems developed. In about July or August (the date is uncertain) she was informed by one of the painters and dockers, a Mr Dennis Lowe, that a starting price book was to be conducted at the hotel from the following Saturday. Neither Mrs Cooper or her brother wanted an SP bookmaker at the hotel but she was too frightened to resist. In particular she was frightened of one painter and docker who was known as "Tom the Turk". This man had been involved in one incident at the hotel where a broken glass was used in a violent melee. Hospital treatment was required. The bookmaker at the hotel was Dennis Lowe. It was Mrs Cooper's belief that the man controlling Dennis Lowe was Roy "Spider" Holman.

4.05 A further incident occurred when a man left some marijuana plants for safe custody with Mrs Cooper. In due course the presence of these plants was noted by the police and Mrs Cooper was charged with possession. In answer to the Commission Mrs Cooper said that she would not reveal the name of the man who left the marijuana with her and she would never reveal it. Mrs Cooper's brother indicated that the marijuana was connected with a painter and docker and he said that he was afraid. I have no doubt that Mrs Cooper's reluctance to inform me of the name of the painter and

docker was based on a genuine fear for her physical safety and in the circumstances I did not think it was appropriate for me to require her to answer that question or to refer the matter to the Supreme Court.

4.06 During December 1981 Mrs Cooper had an arrangement with "Spider" Holman that she would cash for him various taxation refund cheques received from the Taxation Department in various names. Reluctant though she was to do this she felt she had no choice. The procedure which Holman laid down was that Mrs Cooper would retain the cheque when it arrived for about ten days and then pay Holman the cash for it. In late December when Holman was on holidays, Mrs Cooper paid one of the cheques into her own bank account. It is irrelevant to my inquiry whether this was done by mistake or deliberately. In the event when Mrs Cooper realized what she had done and in fear that Holman would react adversely to her action she made various rather inept attempts to reverse the situation, have the Taxation Department cancel the cheque and supply her with a fresh cheque. In the meantime Holman was on almost a daily basis asking Mrs Cooper for the cheque. She said she had never received it. Holman said that he had had no trouble with about twenty other cheques which he had cashed in the same way at other hotels and became violent. As a result of the violence Mrs Cooper suffered a bleeding nose and her brother was assaulted.

4.07 The cheque which Holman was demanding to be cashed was not in his name but in the name of one Donaldson. On the surface it appeared that a racket was being organised by Holman to collect taxation refund cheques in various names other than his own. Suspicions of ghosting were raised. Of course there may have been a legitimate explanation for these activities which Holman could give.

4.08 These events were the background to the article in The Bulletin. Following the article Mrs Cooper gave evidence in confidence to the Commission and subsequently in public. After the article appeared in The Bulletin she was approached at the hotel by Dennis Lowe who sought her confirmation that it was she who was the person who was referred to in the article; she was then told in violent language that "you are on". She interpreted this as a threat of violence either to herself or to her hotel. On the same day that she gave evidence to the Commission she was told by one of her staff that that person had been informed by someone in the hotel that she had better leave the hotel as it was going to be blown up. Mrs Cooper was herself told by a former painter and docker in the hotel to be very careful wherever she went and to be careful about the hotel because it will probably get a bomb thrown in it.

4.09 Prima facie there would appear to be a number of disturbing features of this story. Firstly there would seem to be an assumption by the painters and dockers that they were entitled to act without regard to the law. Secondly that assumption would seem to be based on the ability of the painters and dockers to rely on the fact that other citizens would not report their activities to the police because it was well-known that the painters and dockers were a group of whom ordinary people should be terrified. Thirdly there was the reality of violence as demonstrated in the hotel. Fourthly there was the threat of additional violence of a major kind. Fifthly there was the imposition on the hotel of an illegal activity.

4.10 All these matters of course are based on the acceptance of Mrs Cooper's evidence as truthful. Mr Holman and Mr Lowe were both subpoenaed to attend before the Commission. Both refused to answer any questions and in support of their refusal produced to the Commission a resolution of the Victorian Branch of the union directing its members not to co-operate with the Commission. Mr Holman incidentally is a member of the Executive of the Victorian Branch of the union.

4.11 As a result of their refusal to answer the questions put to them, I referred the papers to the Attorney-General of Victoria who in turn referred them to the Supreme Court. Both Holman and Lowe were fined \$500, in default imprisonment. Both men refused to pay their fines and in due course a warrant for their arrest was issued. On Monday, 21 June 1982, Mr Lowe attended at the Station Hotel demanding to be arrested and indicating that he wanted full media coverage of the arrest. In fact he was to be disappointed because the warrant was not at that stage available. He was, in fact, arrested the following day without the benefit of media coverage. Holman gave himself up to the police shortly afterwards and both men were imprisoned. Almost immediately the union throughout Australia went on strike and threatened to stay on strike until the men were released from prison.

4.12 Since Mrs Cooper gave evidence to the Commission there has in effect been a black ban on the hotel. Her former patrons are frightened to be seen drinking at the hotel and her business has almost disappeared. She has sworn that she is losing \$2,000 a week. Although I have no confidence that this figure is accurate there is no doubt that the hotel is no longer a viable business. In addition there have been a series

of episodes associated with violence. Windows have been broken, sheets of iron have been removed from the roof of the hotel, a phone in the hotel has been torn from the wall, and a shot gun blast on the side of the hotel has occurred. It is not possible to identify any particular person responsible for these events. Nor is it possible to say with absolute certainty that they were done by painters and dockers and their friends. The coincidence of events, however, is very strong and in the absence of evidence from members of the union, and in particular Holman and Lowe, I would have no hesitation in coming to the conclusion that members of the union have determined to drive Mrs Cooper out of business by threats of violence and actual violence. Indeed, having regard to the matters discussed in Chapter 7 of this Report (pages to), the direction by the union to its members not to answer questions asked by the Commission produces an irresistible conclusion that the activities of Holman and Lowe carried the approval of the union.

4.13 This sad story is consistent with the image presented by the union to the community. The union has created for itself over the years a reputation for violence and for the community an atmosphere of fear. This has made it almost impossible to obtain evidence against members of the union in relation to their criminal activities. They in effect operate as a state within a state. This union has a positive policy of recruiting hardened criminals, at least in Victoria. Such people normally are unattractive to honest people, including the many honest and hard working trade unionists in this country. But to this union such criminals are desirable. It is probably for the purpose of making use of their dubious 'talents'.

4.14 It is not necessary to pass any judgment on Mrs Cooper or her reasons for telling her story to the media. What concerns the Commission is the results that have flowed from her action and from her subsequent evidence before the Commission. If an ordinary member of the community is mentioned in an article in a newspaper and that person feels either that the article is inaccurate or defamatory there are a number of avenues open to him. But these rules do not apply to the painters and dockers. Their answer to any interference with their activities is not to use the processes of the law but rather threats violence and intimidation. Their history of violence, which I will deal with in chapter 5, is of such an order that any person confronted by them will have good reason to believe that the threats are not empty.

4.15 In this way the painters and dockers have assumed to themselves a position outside the law and have maintained that position by violence. This the community cannot tolerate.

CHAPTER FIVE

VIOLENCE IN THE UNION

5.01 In a recent document the Federal Secretary of the Union, Mr Terry Gordon, wrote to a number of members of Parliament attacking the activities of the Commission in various areas. I will deal with this document in greater detail in Chapter 7. In the course of the letter Mr Gordon said:

"Lastly, as regards the allegations of violence and murder. All during the last Royal Commission and the present one, the Union continued to function in the way it always has, servicing the industry without complaint from the employer. The only murder which has been proven, over the twenty odd years that the media in all its forms has been rehashing, is that of the murder of our late Victorian Secretary, Pat Shannon, for which a man named Longley is presently serving a life sentence in Pentridge Jail. He is being used by the Federal Government in the proceedings before the Royal Commission as a stooge, churning out unfounded allegations against the Union of which he was only a member for one year. His statements have been given to rags like the "Bulletin" and the pornographic magazine "Penthouse" in an effort to blacken our Union. If we can be slandered by a convicted murderer responsible for the death of a union official it is a pretty sad state of affairs."

5.02 The inference which Mr Gordon no doubt would wish to be drawn from the above paragraph is that there has only been one incident of homicide over the last twenty years and that to suggest otherwise is to do a great dis-service to the union. It may be true that convictions for murder in that period have been small in number but it is certainly untrue to suggest that there has been only one murder or attempted murder. Indeed the truth is so much to the contrary that it is important, I think, that I should set out the true situation.

5.03 In describing the violence that has occurred on the waterfront a limitation of time of the past ten years has been imposed. There were earlier incidents which tend to have captured the public imagination but they are now remote. For example the shooting of Harrison in 1958, the offender never being identified, far less apprehended and prosecuted, and the death of Bradshaw in 1961, the full circumstances of which have never been finally determined, are frequently mentioned when one engages in a discussion of this nature.

5.04 They are not the only events of the 1960s that tend to capture the public imagination. In 1968, there was the attempt to steal some \$2 million from the Commercial Bank of Australia by use of forged letters of credit - a crime which required a simultaneous and complex operation in both Melbourne and Sydney. It relied heavily upon Painters and Dockers from the Sydney wharves. It was followed shortly afterwards by two armed robberies in Sydney (Mayne Nickless) and Melbourne (MSS) which respectively netted the greatest amount ever stolen until then in each state. In each case the offenders were identified, and in many instances apprehended. Many of them were Ships Painters and Dockers, and, indeed, having now served their terms of imprisonment they are to be found again working as members of the union on the wharves in Melbourne and Sydney. However this Commission is more concerned with events of more recent times, and it is on those events that this part of the report concentrates.

5.05 The selection of criminal incidents of violence has as a necessary part the determination that some characteristic of the violent act relates it to the Ships Painters and Dockers, whether considered as a union, or as an occupation.

In making this selection, the Commission has been satisfied that there is a connection if one or more of the participants involved was a Ships Painter and Docker, or, if not, if the incident as an incident had some relationship to the affairs of Ships Painters and Dockers.

5.06 On this basis there has been selected some 15 murders that took place between 1970 and 1979. The two worst years were 1971, when three murders took place, and 1979, when four took place. In addition, there were a further 23 incidents in which death may well have resulted, and in which death would appear to have been the intended result. In almost all of them the weapon used was a gun and the victim suffered serious gunshot wounds. Thus there is a total of 38 serious incidents of violence, almost all of which involved the use of firearms. That there could be so many over so short a period of time (nine years) is a matter of concern.

5.07 The first incident occurred in 1970 when Patrick Chamings was killed in a brawl behind the Vine Hotel Collingwood. He was one of four brothers, and of the remaining three only one survived the next two years. It appears that the survival of this brother (Norman) was due to his rapid departure from the State.

5.08 1971 saw three murders occur. The first was Allan Johnston who was killed in a fight in a South Yarra Hotel on 30 April 1971. His murderer was Allan Edward Quaife, who was subsequently apprehended, prosecuted and convicted. He is presently serving a term of 20 years jail.

5.09 Next followed by the murder of Nelson, a murder which, like so many others, has never been solved.

Indeed, in the case of Nelson not even the body has been recovered, although inquiries have been made as far afield as Hong Kong in an endeavour to recover the body.

5.10 The final murder of the year was that of Costello. It appears that Costello was intercepted by his killers, taken to another place, murdered, then brought back and his body dumped on what was then the partially constructed freeway passing through Collingwood. His murderer has never been identified.

5.11 In the case of both Costello and Nelson, the Police initially believed that the murders were related to the union elections. Later it was believed that Costello was murdered because he had participated in some fashion in the Mayne Nicholas robbery, and had received part of its proceeds. These are no more than theories. In these, as like so many other of the criminal incidents, a curtain of silence descended across the waterfront, and the Police found that their inquiries came to an end without resolution of the matter.

5.12 In 1971 there were a number of attempted murders. Hoey was seriously assaulted by Levidis; Crotty was so severely assaulted with a brick as to be committed to a mental institution for the rest of his life; a back window and a windscreen of a car driven by Connor were shattered by the discharge of a shotgun; likewise Dix had his car sprayed with bullets and another of the Chamings brothers was shot and wounded. At that time the offices of the Victorian Branch of the union were sprayed with machine-gun bullets. It was the time of the election which was bitterly contested between Nicholls and Longley, and much of this violence has been attributed to that conflict.

5.13 In 1972 Loftus was knocked down and killed by a motor vehicle subsequently identified as being registered to Painters and Dockers. The investigation was unable to identify the driver. Later that year Maloney was murdered by O'Driscoll in Sydney.

5.14 There continued to be a large number of shootings in Melbourne, though the victims survived. Hamilton, Wootton, Sulley, Hodder, Connellan, Bazley (on three separate occasions), Monash, Priest and Cook were all shot at and suffered injury. The year could be described only as one of mayhem, notwithstanding that the elections had been disposed of in January of that year.

5.15 In 1973 Lawrence Chamings was first shot at and wounded and then, when he recovered, he was chased by his killer into the Moonee Valley Hotel in Fitzroy and there executed. An innocent eleven year old boy was shot and killed at the same time, thus belying the comment once made by Shannon that the union restricted its acts of violence to its own members. Shannon's reaction to the death of Lawrence Chamings, and the boy, was to say that he "had never heard of Lawrence Chamings". That too was belied by a note found a year later in the records of the union, from one Vicki Chamings who thanked the Victorian Union for a \$5 gift and who "found it touching to be remembered after some years had passed". Vicki was the wife of Norman Chamings, who in turn was the brother of Lawrence Chamings. It was nonsense for Shannon to say, as he did say, that he had never heard of him.

5.16 However it was one of the last utterances made to the press by Shannon, for in October 1973 he was murdered.

There seems no doubt that the weapon was fired by Taylor who had Harding as an accomplice. Subsequently Longley was convicted of the murder of Shannon on the basis that he had paid Taylor to commit it. Also in that year there were shootings of Rowley, Croft and Reeves.

5.17 The violence continued unabated. In 1975 Harding told two other inmates of jail that Longley was not involved in the murder of Shannon. Shortly afterwards Harding was murdered by Taylor, and subsequently Taylor was convicted of that murder. Thus Taylor had committed, by that time, some two murders in the space of three years, notwithstanding that at the time of the second murder he was in prison. That same year Power was shot at by persons unknown.

5.18 In 1977 a woman by the name of Thompson was murdered and her body dumped at Webb Dock. She can be shown to be closely associated to Painters and Dockers.

5.19 That same year an attempt was made on Allard's life. At that stage it failed.

5.20 In 1978 Raymond Kane was murdered in his home and his body removed. Some men were apprehended and placed on trial for his murder, but they were acquitted. His body has never been recovered. All men involved in that incident, Kane and the alleged offenders, were members of the union and worked as Ships Painters and Dockers. That same year shots were fired into a car driven by Nicholls; and Kane's wife was followed and her car ran off the road by men who were apparently annoyed at her for having identified the killers of her husband.

5.21 1979 saw more murders than in any other year during the decade. The deaths included that of Reeves as he drove to join the Lysaght Endeavour; Allard as he walked along Fitzroy Street St Kilda; Bennett, as he was being taken by the Police through the City Court Melbourne to the Court allocated for his committal proceedings in respect of another murder; and Stone as he walked towards his place of work at Duke and Orr. All of these men were members of the union. All of them were professional criminals. Bennett was believed to have been a person who murdered on the payment of money. Allard was believed to have been the head of a drug syndicate.

5.22 The history of violence of this nature must be unique in this country in that it encompasses so many incidents over so short a period of time, all of which may be linked with a particular occupation. It is appropriate to repeat the views of Gordon, the Federal Secretary, who stated that there was nothing unusual in such a history. "Is this unusual? I know Managing Directors who have got shot, wharfies who have got shot, people in all walks of life who have got shot. What is happening within the union is the union's own affair, and will be settled inside the union". He also suggested that what is happening "is private business and has nothing to do with the union". On the other hand he told the Royal Commission conducted by Mr Justice Sweeney "we catch and kill our own". Of all the statements he has made on this subject, the latter seems the most appropriate.

5.23 Any suggestion that there have been no incidents of violence directly attributable to members of the Painters and Dockers' Union in respect of their operations since the conviction of Longley cannot be sustained in light of this history.

Nor can it be accepted that Longley's conviction halted the violence. It may have been expected that, with the intimidation and violent assault made upon the opponents of the Nicholls faction within the union during and since the 1971 election, the level of violence would have gradually subsided. Had that happened, it would not be a matter in which the community could take any satisfaction. In the event it did not happen. The violence has continued, and in 1979 it was of dramatic proportions. No community can tolerate a group within it that regards the taking of a man's life as permissible provided he belongs to that group. Far less can a community afford a section who not only hold that belief, but acts upon it.

5.24 With such a history of violence, murder and maiming, there can be little doubt that this union in Victoria is regarded with considerable fear. The last nine years are studded with members of the union being convicted of illegal possession of firearms. At the trial of one of them, the legal representative addressed the Magistrate on the fears under which that man lived and worked on the docks. He said "the men are in great fear at the docks. They are even worried about talking to friends or having a drink with them. Men in the Painters and Dockers' Union have armed themselves in some way, whether with guns, knives or sticks". Whether those comments were truly applicable to the case in hand matters not. The fact is that with such violent incidents having taken place in the past nine years, any member of the union quite understandably could feel such concern should he believe that he has in some manner offended those in control of the union.

5.25 Threats of intimidation are not unknown. Former Secretary Carey is alleged to have deserted his

office upon a threat made as to his life, and he being told to go. It is not the only example of intimidation. The files of the Naval Police at the Williamstown Naval Dockyard contain many similar examples. A brief account of them will suffice.

In 1972 Leonard John Ryding was threatened with murder.

In 1975 Foreman Elliott's car tyres were slashed.

In 1977 on two separate occasions Foreman Elliott's car was damaged by paint remover being tipped over it. In the same year Walter Carruthers was assaulted.

In 1978 a medical practitioner, John Silver had his car damaged by paint remover.

In 1979 Foreman Elliott's car was again damaged by paint remover, and Raymond Jordon was threatened with murder. Another employee, R M Holland was assaulted with a weapon.

In 1980 Foreman Elliott was threatened with murder. One John Batty, a Painter and Docker abused and threatened the Naval Police.

5.26 The Naval Dockyard at Williamstown is not unique in the difficulties it appears to have with the Ships Painters and Dockers employed there. However there is certainly much of which it could complain in respect of the behaviour of Ships Painters and Dockers. The Victorian Police reported that the General Manager and Secretary of the Dockyard, upon being questioned by

them, "made no complaints of incidents of extortion, intimidation and violence taking place at their establishment". If those gentlemen did not see fit to pass on to the Victorian Police the types of incidents which had in fact taken place, and were taking place at the time when the Victorian Police investigated the matter, the likely explanation is that they too were frightened by these men. If that is the explanation, the basis of that fear is to be found in the history of violence that has pervaded the waterfront in Victoria over the past ten years. Their fear in reporting the violence, far less their fear in doing something about it, is indicative of the pernicious effect that this form of behaviour can have upon employers and their industrial works in particular, and upon society in general.

5.27 In giving this account, this part of the report has concentrated upon violence to the person. Passing reference was made to armed robberies that took place in the late 1960s and early 1970s. It must not be thought, by the omission of any account of further robberies, that they have not taken place. Armed robbery has occurred at the Naval Dockyard. Others have occurred at Carlton and United Breweries and elsewhere. Men employed as Ships Painters and Dockers have been the offenders. There is evidence that that type of offence is continuing unabated, and that there is no reason for supposing that men belonging to this union have forsaken this form of enterprise.

5.28 The question does arise as to whether the union has any part in these activities as a union, as distinct from its being no more than the activities of a number of men of like character being brought together.

The Commission does have views on this question. There are matters of significance to be noted that assists in its answer. One matter is the prevalent provision of alibi evidence should any one of its members be arrested by the Police. Another is the provision of legal services by the union through it providing the money by which those services can be acquired. Moreover there is the facility offered by the union to equip a criminal 'on the run' with a false identity and to find him work interstate out of sight of the authorities. I will refer to this in more detail in Chapter 7.

CHAPTER SIX

UNION REPRESENTATION

6.01 In Chapter 5 of this Report I referred to a recent document written by the Federal Secretary of the union, Mr Terry Gordon. In that document he stated that "because of the way the Royal Commission has been conducted and for the whole time since the Royal Commission commenced the union has had no opportunity given to it to present material to refute these allegations. We were also deprived of a legal representative because the Commission barred our Counsel, Frank Galbally."(my underlining) In view of the decision of the union to direct its members not to answer any questions to the Commission I have some difficulty in understanding how the union proposes to present material to refute allegations made against it. Moreover the assertion contained in the second sentence of the quotation is clearly to the effect that the union was prevented from presenting material to the Commission because the Commission had refused it representation.

6.02 The truth of the matter is so far removed from what is suggested that I think it important that I should set out the history of representation of the union before the Commission.

6.03 On 1 October 1980, which was the date on which my Letters Patent commenced, leave was sought to appear by Mr Frank Galbally, Mr David Galbally and Mr Peter Ward on behalf of the Federated Ship Painters & Dockers' Union of Australia. Leave was granted.

6.04 As the hearings continued it became increasingly apparent that there was a potential conflict of interest for Mr Galbally arising out of the fact that he and other members of his firm had for many years acted for a very large number of painters and dockers whose interests might conflict with each other and in turn with the union. In addition there was a potential conflict between the interests of the Federal union and its State branches. The possibility of this conflict became very clear when Mr Longley, who had been convicted of murdering a previous Secretary of the union, Mr Pat Shannon, was called to give evidence.

6.05 On a number of occasions during the first half of 1981 these matters were raised for discussion. I will not particularize these discussions as details appear in the transcript of the public hearings. By 29 May 1981 I had determined the matter could not be left in abeyance any further and I sought and received submissions both from Mr Galbally and other counsel in respect of these questions. On 9 June 1981 I delivered a ruling the text of which I now set out:

"A number of questions have arisen in relation to the present and future representation of the Federated Ship Painters and Dockers' Union. Those matters have been the subject of submissions by all interested parties and it is now necessary that I should rule on those submissions.

Let me trace briefly the history of representation so that the issues raised in the recent debate can be properly understood. When the commission commenced on 1 October 1980 leave was granted to Mr Frank Galbally, Mr David Galbally and Mr Peter Ward to appear on behalf of the Federated Ship Painters and Dockers' Union. On a later date leave was also given to Mr Harold Cottee to appear in addition to those solicitors.

Early public sittings of the commission were concerned primarily with the collection of documents throughout Australia. Some weeks before it was proposed to call Mr Longley to give evidence I raised with Mr Galbally the question as to whether he would be able to continue representing the union during Mr Longley's evidence. The reason for this question was that Mr Galbally, as he clearly conceded, had previously acted for Mr Longley and there could well be problems associated with his cross-examination of his former client on behalf of the union. Mr Galbally appreciated the possible difficulties which might flow from his continuing to act whilst Mr Longley gave evidence and arrangements were made through his office for separate solicitors to brief counsel, Mr McDermott, to represent the union whilst Mr Longley was giving evidence.

During the course of Mr Longley's evidence, which has not yet been tested in cross-examination, he made a number of serious allegations against the Victorian branch of the union and in particular against its present secretary, Mr Nicholls. On a number of occasions I indicated to Mr McDermott for the federal union that there seemed to me to be good cause for the Victorian branch to have separate representation and in addition I indicated to Mr Nicholls that he may well himself wish to be represented having regard to the serious allegations made by Mr Longley. In the course of sitting in Sydney during the examination of a former member of the union, Mr John Andrews, (also known as Bees and Knight) the New South Wales branch of the union was separately represented by counsel.

In the course of Mr Longley's evidence reference was made to discussions Mr Longley had previously had with his former solicitor, Mr Galbally. On 28 May 1981 Mr Galbally gave evidence on oath in relation to certain documents produced from his office records together with his recollection of certain events associated with criminal proceedings against Mr Nicholls at the Williamstown court in March 1978 when Mr Galbally appeared for Mr Nicholls. Arising out of that evidence it seemed to me that a serious problem arose as to whether it was possible and/or proper for Mr Galbally and his associates to maintain their representation on behalf of the union.

A number of separate issues arise. Firstly it was submitted by Mr Clark of counsel who appears for the Minister for Defence that having regard to the provisions of the Commonwealth Conciliation and Arbitration Act I have no power to allow representation to the union other than the federal body and that I could not allow representation to separate branches of the union. I will refer to this submission later.

Secondly certain problems have arisen as to whether Mr Galbally and his associates can continue to represent the union at all. These difficulties arise in two different ways.

In the first place Mr Galbally and his office, as is freely conceded by him, have acted for a very large number of painters and dockers over a long period of years. As between each such painter and docker and Mr Galbally there arises a professional relationship of solicitor and client, in the course of which relationship matters may have been disclosed to Mr Galbally which are privileged. A good example of that problem arises with Mr Longley. As he very properly conceded, Mr Galbally was not able to maintain his representation on behalf of the union whilst Mr Longley remained in the witness box as cross-examination of Mr Longley would have carried with it the appearance that Mr Galbally may have been making use of such privileged information. In the result Mr McDermott has appeared for the union during Mr Longley's evidence. But the difficulty does not stop simply at the time of cross-examination. At some stage in these proceedings the person who represents the union will have to make submissions as to the findings I should make. There may well be a conflict of evidence between Mr Longley on the one hand and, for example, Mr Nicholls on the other hand. The union may wish to submit to me that I should prefer Mr Nicholls' evidence and should not accept Mr Longley's evidence. If Mr Galbally is the solicitor who makes these representations he is faced with the very difficult task of attempting to disparage Mr Longley's evidence without offending against the reasons which legitimately preclude him from cross-examining. I personally see enormous difficulties in this dual role.

Mr Galbally at page 2439 of the transcript acknowledged that there were such obvious difficulties, and at page 2440 he said to me that he would not be putting any submissions to me in relation to a matter that was a matter of professional privilege in relation to his clients on previous occasions. The difficulties I have indicated in relation to Mr Longley of course compound themselves the larger the number of such potential former clients of Mr Galbally who may be called to give evidence. On page 2440 Mr Galbally agreed that there would probably be fifty such people for whom he had acted in the past. I put to him the problem which could emerge on each occasion when such person went into the witness box and he, Mr Galbally, may have to retire and Mr McDermott or some other practitioner would have then to appear on behalf of the union during the evidence of that witness. The difficulties he would then be faced with in making his final submissions whilst attempting to isolate his submissions from such evidence as might be embarrassing to him are very great indeed and I said to him that I thought it would place him in an almost impossible intellectual position to which he replied that there was no doubt it was a very difficult situation. There seems to me to be a very real disadvantage to the union if its representation is constantly split depending on the nature of the evidence which is then being called and particularly is it disadvantaged when the time comes to make appropriate final submissions to me.

The second difficulty arises from the fact that Mr Galbally has already been referred to in evidence by Mr Longley, has already given evidence to me in relation to certain matters, and is likely to have to give further evidence. All these facts arise from Mr Galbally's very close professional relationship with the union and its members over a long period of time. But it does pose a serious problem both for Mr Galbally himself and for the union. I cannot, of course, anticipate what is likely to be future evidence either from Mr Galbally or from other witnesses and therefore I cannot say with any assurance that no conflict may arise between the interests of the union and the interests of Mr Galbally.

But should I not take into account in considering the question of representation of the union that there exists as a possibility that there may be a conflict of interest on some matters in which Mr Galbally's evidence and/or submissions may not be consistent with the best interests of the union? If that is a real possibility then I would need to be persuaded that I should allow the union to be represented in its own interests by Mr Galbally.

Perhaps the problem can be illustrated by reference to two matters which arose out of Mr Galbally's sworn testimony on 27 May.

Mr Galbally's evidence was primarily concerned with events at the Williamstown court in March 1978 at which time he was representing Mr Nicholls on a number of charges. The charge which excited my interest related to some events in November 1977 when Mr Nicholls was found to have in his possession at his home a very large sum of money in cash - some \$11,521. He was charged with unlawful possession of that money. He was acquitted of these charges by the magistrate at the Williamstown court and shortly thereafter, as was proper, the money was returned to him in cash. Evidence of Detective Senior Constable Holcombe, the informant to those proceedings, was that the money was placed in the boot of Mr Galbally's car after it was collected by Mr Nicholls, and Mr Galbally indicated that he would look after it for Mr Nicholls. In fairness to Mr Galbally he denied any recollection of that episode. It is possible that when Mr Nicholls gives evidence his version of these events will coincide with that of the police informant and leave open questions, which may be troublesome to Mr Galbally, as to what happened to that money.

Perhaps a more serious matter arises out of the events in that court hearing. It was Mr Nicholls' position that the money found in his possession was legitimately in his possession because either it was part of his life savings or it was in part monies which had been collected by the union in Victoria and other states for the defence of a Mr Durston who was facing charges of false imprisonment. It was suggested by Mr Nicholls that the money which had been so collected was wholly or in part returned to him and was therefore properly in his possession.

In support of this defence, evidence had been called by Mr Galbally from an official of the New South Wales branch of the union to prove the collection on behalf of Mr Durston, and from a Mr Campbell in Melbourne who had arranged through Mr Nicholls that the money be so collected.

If this factual situation could be substantiated it amounted to a complete defence for Mr Nicholls of the charge of unlawful possession of at least that part of the money which could be attributed to the Durston collection. In further support of that defence Mr Galbally called his son Mr David Galbally after a discussion at lunchtime to give evidence that the firm of Messrs Galbally and O'Bryan held in its office records a ledger card demonstrating that it had acted on behalf of Mr Durston. The actual ledger card was not in court and was not produced. It has, however, been produced to me. It indicates that monies had been paid to the office of Messrs Galbally and O'Bryan partly by or on behalf of Mr Durston and partly (to the extent of \$100) by Mr Campbell. All the monies received on account of Mr Durston's defence were accounted for and the ledger card shows no payment out to Mr Nicholls of any part of the money received by Mr Galbally and therefore provides no support for the contention by Mr Nicholls that money had been received by him from some source in relation to the Durston monies.

Indeed, if the evidence properly analysed has any meaning it would be in my view damning to the defence raised by Mr Nicholls. Despite Mr Galbally's attempt to justify the production of this evidence on the basis that, though of minor significance, it did assist to demonstrate that there had in fact been a man called Durston charged with a criminal offence, which could easily have been proved by non-ledger evidence, I am satisfied in my own mind that it was quite irrelevant to the proceedings brought against Mr Nicholls. The matter needs to be investigated further, because it is clearly of great interest to me in the investigation under my commissions to trace the connections between Mr Durston and the union, particularly having regard to the allegations of Mr Longley, as yet untested by

cross-examination, that the connection involved an element of racketeering. But at least at this time it is my view that the reference to the ledger held in the offices of Messrs Galbally and O'Bryan was so irrelevant to the issues raised in the hearing that its production in the circumstances can only be regarded as misleading.

The significance of the above remarks is that they raise an area of considerable concern to me in the middle of which I find Mr Galbally as a central character. If a question arises as to what are the true facts surrounding this money and the relationship between Mr Durston and the union, and/or Mr Galbally, then it may well be that Mr Galbally rather than representing the union should himself be represented before me to have submissions made on his behalf. In those circumstances I find it highly undesirable that he should be maintaining his representation on behalf of the union.

On the other hand I am faced with the quite clear decision as communicated to me by Mr Galbally after consultation with his clients and in the presence of Mr Nicholls, the secretary of the Victorian branch, who has been made aware by virtue of the discussion held in his presence of the problems I have outlined, that Mr Galbally should continue to represent the union during this commission. As I have said on a number of occasions, a Royal Commission is not a court of law and it does not in any legal sense affect the rights of any individual. Those rights must ultimately be determined in a court of law. Moreover, it seems to me that my powers to grant or refuse leave are very largely unencumbered. Nonetheless it is clear to me that the exercise of my discretion to allow or refuse leave to be represented should not be taken lightly. In this case the commissions are to investigate the affairs of the union. The union is the central party to these commissions and it is desirable that it above all others should be represented before me. That view has in essence been accepted by government which has provided legal aid to the union for that purpose.

The union has indicated its desire to have representation of its own choice: it is a fundamental right of a person to choose his own lawyer unless there are very strong reasons why the choice cannot be exercised in a particular manner. Moreover the union has been made aware of the possible damage to its own interests by continuing its current representation. Despite the fact, it has requested that the representation should continue in its present form.

It seems to me that for me to decline Mr Galbally's application, despite all the reservations I have expressed, would not be a correct step to take at this stage. I propose therefore to accede to Mr Galbally's application and to allow him and his three associates to continue their representation of the union.

An application has also been made by Mr Terry O'Brien for leave to represent Mr Nicholls, the secretary of the Victorian branch. I have already indicated my view that Mr Nicholls should have separate representation. It did seem to me however that there might be some problems with the particular application. The problem arises from the fact that Mr O'Brien has himself acted for a large number of painters and dockers. One of these, Mr Bees, gave evidence in Sydney. Others may well give evidence in the future. To some extent, therefore, a similar problem may occur as that to which I have already referred with Mr Galbally. Mr O'Brien has informed me that Mr Nicholls is aware of the potential problems and has reiterated his firm desire that Mr O'Brien should represent him. In those circumstances I propose to grant Mr O'Brien leave to represent Mr Nicholls.

There has been full discussion of these matters and both the union and Mr Nicholls and Mr Galbally have been made aware of the problems which may arise at any time during the hearings. Despite this they have persisted in their respective applications. If any of the events to which I have referred in fact arise in such a way as to require an application for fresh representation it cannot be assumed that any application for an adjournment will be favourably received.

Mr Clark has submitted to me that the Victorian branch of the union has no legal identity separate from the federal union. This submission was made at a time when it was contemplated that application would be made for the Victorian branch to have separate representation. In fact no such application has been made as yet. I will therefore not rule on his submission at this stage. I will say however that there do seem to be some difficulties in the way of such representation. It may be a different matter however if such an application were to be made on behalf of some defined group of persons such as the persons constituting the committee of management of a particular branch. I will rule on this matter if and when an application is made."

6.06 The Commission continued sitting throughout June and into July. During this time Mr McDermott continued to act for the union, he having been granted

leave to act on behalf of the union on 5 May at a time when Mr Longley was being examined. Further, during this time Mr Galbally, who had been called as a witness, was himself represented by Mr Winneke of Queens Counsel and Mr Guest. It was obvious from the nature of the evidence being called at that time that it would be necessary for Mr McDermott to continue to represent the union for a considerable time as Mr Galbally's conflict of interest would be a continuing one. It seemed to me an intolerable professional position for Mr Galbally, himself a witness and professionally represented, to be at the same time on the record as representing the union save in the situation where conflicts were likely to arise. In those circumstances, on 16 July 1981 I raised the matter again with Mr Ward, an associate of Mr Galbally's, who was present before the Commission on behalf of Mr Galbally. I said to Mr Ward, (and I here quote from the transcript).

THE COMMISSIONER:

"There is another matter I would like to mention - addressed to you directly, Mr Ward, although Mr McDermott will be interested in what I have to say. Mr McDermott is currently appearing for the union for reasons which are clear to you, Mr Ward, to me and to him. It seems to me that his current appearance is likely to continue for some time, having regard to the nature of the investigation that is currently going on. I would have thought that one could be talking in terms of months rather than weeks for that representation to continue.

I have already ruled in relation to the debate that took place some time ago as to the nature of the representation, but it does seem to me that a good deal of separate representation is now occurring before me in relation to various people who wish to be represented. I think that the question of representation of the union ought to be kept very much in the forefront of my mind and kept in the proper order. What I propose to do, Mr Ward, is to withdraw for the time being

representation of the union by your firm, making it clear when I do so that in accordance with the ruling I made some months ago, that when the appropriate time comes when it is felt by the union that no conflict arises, that you should immediately make a further application in relation to representation.

It does seem to me that the present situation is an awkward situation, where Mr McDermott is appearing for the union, and properly so, yet in the background your firm is representing the union when it is able to come in and do so, but that time is not likely to occur for a period. What I propose to do - I am not asking you to comment on this at this stage, but merely so I can inform you and you can report back to your firm - I propose for the time being to withdraw the representation I granted to your firm to appear for the union; Mr McDermott is currently occupying that role. I make it clear to you in terms of my ruling that when the time comes when your firm feels it appropriate to come back into the arena, that such application should be made at that time. Do you understand that?

MR WARD:

There is just one matter. I have been at the bar table since the Durston affair commenced on the basis of just in case there is any misunderstanding about that matter. I have been here more in the sense of a watching brief for Galbally and O'Bryan.

THE COMMISSIONER:

That is how I understand it.

MR WARD:

I can assure the commission that at no stage have I been instructing Mr McDermott, although I have been in close proximity to him.

THE COMMISSIONER:

I am glad you said that, because I would not want there to be any misunderstanding about that. It is my view that you have been properly present throughout this hearing and that your role has been that of instructing Mr Guest and Mr Winnecke when they are here, but when they are not here you have in a sense a watching brief. I think you are properly present, do you understand what I am saying?

MR WARD:

I understand fully what you have said and I will report back to my principals.

MR McDERMOTT:

Might I address you on that point?

THE COMMISSIONER:

Yes.

MR McDERMOTT:

I do not want to argue at this stage about why that should not be done, but I refer you to the letter handed up at the time of the argument on representation. I remind you of the union's expressed intention that I was brought here to deal with one particular matter, but that has now long passed and I have gone into other areas, but at this stage I reserve my right to make a statement or further submission later.

THE COMMISSIONER:

Of course. I think I made it quite clear in the ruling I handed down a month or two ago that I understood the union's desires and that played a very big part in the ruling I made. What I am doing is clearing the record as we go along. I have made it quite clear to Mr Ward and to his firm and to you also that when the area in which you are representing the union ceases, that I would expect to hear an application in accordance with the union's wishes. I am not taking a step which seems to me to be contrary to what the union does wish, merely to tidy up the formalities of the proceedings."

6.07 These discussions took place at the commencement of the hearings on Thursday, 16 July at 11.05 a.m. When the Commission resumed after lunch at 2.15 the following exchange took place:

MR McDERMOTT:

Apparently as a result of what you had to say to Mr Ward and myself this morning, I have been handed written instructions, which I received just after returning here today. I have the original here and I will read it in full:

Acting on instructions from the federal secretary of the Federated Union of Ships Painters and Dockers, we wish to advise you that we are now withdrawing instructions from the firm of Peter Walsh, Solicitors, and counsel retained by that firm, Mr Peter McDermott, to act for the federated union or branches of same this day, the 16th day of July 1981. We confirm our earlier decision that the legal firm of Galbally and O'Bryan are the sole legal representatives of our federated union and its branches.

That is signed by D Sproule and R Dix. I tender that document. I seek leave to withdraw.

THE COMMISSIONER:

Notice of withdrawal of instructions to the firm of Peter Walsh, Solicitors, and Mr McDermott dated 16 July 1981 will be Exhibit Vic 600. I will grant you that leave, but perhaps I should ask you, when did this document come into your possession?

MR McDERMOTT:

It was handed to me by my instructing solicitor this afternoon just after she arrived back in court.

THE COMMISSIONER:

Did she inform you where she got it from?

MR McDERMOTT:

I am instructed it was handed to her by Mr Ward from Galbally and O'Bryan.

MR MEAGHER:

The apparent withdrawal of instructions is signed by two people who hold no office in the Australian branch of the union.

THE COMMISSIONER:

Mr Sproule and Mr Dix are office bearers of the Victorian executive, and I would assume on the face of it that they are acting with the authority of the executive of that branch. However, I will give you leave to withdraw, but before I do that, the position is that the union is no longer represented before me so long as any issues are being canvassed which provide a conflict between the interests of the

union and those of the firm of Messrs Galbally and O'Bryan. That is a most unfortunate state of affairs; that it has chosen to withdraw voluntarily in those circumstances is most unfortunate.

I gather from what you say that the documentation, which amounts to a withdrawal of your authority, has come from the medium of the firm of Messrs Galbally and O'Bryan.

MR McDERMOTT:

I do not know. I had the document handed to me.

THE COMMISSIONER:

I find it quite extraordinary that the union should be taking the view, when it is currently adequately, if not more than adequately represented in an independent fashion by yourself and Mr Walsh's firm, that it should be choosing voluntarily, at a time when it is well provided with legal aid to maintain representation before me, is choosing voluntarily to withdraw from this commission in circumstances where I have made it quite clear on a number of occasions, and made it even more clear this morning, the current area of investigation is not an area upon which they can seek legitimate and independent advice from the firm of Galbally and O'Bryan. I find the whole exercise quite astonishing. I am sorry that the union has not chosen to take independent legal advice, but that does not of course affect your position, Mr McDermott. Your instructions have been withdrawn and it is with regret that I give you leave to withdraw.

6.08 In the light of the above recital of the events as they occurred before the Commission the statement of Mr Gordon quoted at the beginning of this chapter and which I now repeat - "We were also deprived of a legal representative because the Commission barred our Counsel, Frank Galbally." (my underlining) bears no relation to the facts at all. Indeed it can be said with a good deal of accuracy that from the very earliest days it was the Commission which went out of its way to

ensure that the union was properly and independently represented. It was the maintenance of the relationship between the union and the firm of Messrs Galbally and O'Bryan which created the very serious problems that have been described. It could not have been made more plain by the Commission that the union's interests required a completely independent and professional representation. Once it was made clear that by reason of his previous long-standing connection with a whole range of painters and dockers that Mr Galbally was not able to provide that independent and professional representation the union should have been looking elsewhere.

6.09 For some months the union was professionally and competently represented by an independent solicitor and a Victorian barrister, Mr Peter McDermott. Even this representation suffered from the maintenance of the direct link between the union and Messrs Galbally and O'Bryan and through the fact that Messrs Galbally and O'Bryan maintained the direct financial control over the disbursements to this "independent" solicitor. Nonetheless the union was well served by this representation.

6.10 The excerpt from the transcript which appears above indicate the circumstances under which instructions were withdrawn from this representation. These circumstances reflect no credit either on the union or on Mr Galbally. The union at that time was entitled to receive independent advice as to the course it should follow. It could not have received that advice from Mr Galbally who was personally involved. It is difficult to imagine any responsible adviser to the union at that time tendering any advice other than that it should maintain the independent representation which was serving it well.

6.11 Let me complete the story of union representation. On 29 April 1982 Mr Ormsby, Solicitor of Sydney, applied for leave to appear on behalf of the Federated Ship Painters and Dockers' Union, that is the Federal Branch of the union. Mr Ormsby informed me that there had recently been a meeting of the officials of branches of the union throughout Australia which he described as the first time the Federation as a whole had a chance to get together to work out their situation in relation to this inquiry generally. He informed me that an application had been made to the Federal Attorney-General for legal assistance and he supplied me with a copy of a letter dated 23 April 1982 to the Attorney-General in that regard. In the course of that letter he indicated and I quote "sometime last year Messrs Galbally and O'Bryan withdrew from the Commission again at the instigation of the Victorian Branch and since then the union has had no representation whatsoever at the Commission." The elliptical description of the events of mid-1981 needs to be read for the sake of accuracy in the light of the history set out in this chapter.

6.12 The next substantial appearance of the union occurred in Melbourne on 1 July 1982 when the matters raised in Chapter 4 of this Report relating to the Station Hotel were again discussed. At this hearing Mr Ormsby on instructions from the union made a lengthy statement to the Commission which is incorporated in the transcript. Mr Ormsby referred to the decision made on 18 June 1981 of non-cooperation with the Commission and informed the Commission that a meeting of the Federal Management Committee of the Federated Ship Painters & Dockers' Union of Australia held on 30 June 1982 passed a resolution in the following terms:

"That the decision of non-cooperation as recorded in the Executive Committee minutes of 18 June 1981 be re-affirmed and this means that absolutely no questions will be answered except name, address and occupation"

6.13 The following discussion took place following the presentation of the union's statement.

THE COMMISSIONER:

Yes. That means, does it, in relation to any person called to give evidence, whether an existing member of the union or a past member, will be persuaded by the union not to answer any questions at all?

MR ORMSBY:

I would not use the word persuaded. I think that all the rank and file members are aware of this resolution and I do not think there would be any need to persuade them. I think they would follow the direction of their management committee.

THE COMMISSIONER:

So I can regard it as a direction by the management committee to members of the union not to answer questions?

MR ORMSBY:

These have been passed. To explain the workings of the union, the federal management passes certain resolutions at their meetings. These are then relayed to the branches and then they are approved by the branches. From my understanding of it, all branches in general meetings of the union members have unanimously approved it.

THE COMMISSIONER:

That means that there is a direction from the federal executive through the branches?

MR ORMSBY:

It is not a direction: it is a resolution and it is sent then to the branches for them to approve it and then issued as an official direction as such after it has been approved by the rank and file as members.

THE COMMISSIONER:

For the ordinary member of the union, therefore, he is faced with a resolution of the federal executive in terms that absolutely no questions are to be answered except name and address and occupation. That, in turn, is approved by the individual state branches. So that it then becomes a direction to the members as a matter of union policy: is that a fair way of putting it?

MR ORMSBY:

At the rank and file meetings, as I have been informed, there has not been one voice opposing the situation.

THE COMMISSIONER:

Yes, I am accepting what you say to me on that. So that what I choose to call a direction - - -

MR ORMSBY:

I suppose you could call it a direction.

THE COMMISSIONER:

But there is an approval of that direction by the rank and file?

MR ORMSBY:

It has been totally and fully approved, as I understand it.

THE COMMISSIONER:

I can understand that they do not necessarily approve of it because it is an offence under the criminal law, but I can understand the union taking up this position in relation to a matter strictly of union business. Am I to interpret that resolution as saying that whatever the area of the questioning that the commission would wish to put to a man who happens, amongst other things, to be a member of the union, even if the questions are in an area that have nothing to do with the union, nonetheless you have got to answer them?

MR ORMSBY:

The resolution that was originally passed I think was specifically meant to cover union business.

THE COMMISSIONER:

That is what I would have thought.

MR ORMSBY:

That is what it was intended, but somehow or other members in branch meetings have in fact endorsed this a blank situation.

THE COMMISSIONER:

I might be entitled to draw the inference that the union's support of Mr Holman and Mr Lowe, to the extent of calling a nationwide strike, is an acceptance by them that Mr Lowe and Mr Holman's actions were union actions. Why should I not draw that inference?

MR ORMSBY:

The union have asked to have legal representation for the purpose of establishing that any of these people have got nothing to do with the union.

THE COMMISSIONER:

I would expect you to say that, but in that event why call a nationwide strike when the allegation against Mr Holman and Mr Lowe is that they are bringing private pressure to bear on the owner of a hotel? That is not union business.

MR ORMSBY:

No, but - - -

THE COMMISSIONER:

Then why do they go out and strike if it is not?

MR ORMSBY:

The view that has been taken - - -

MR KAUFMAN:

Perhaps to assist my learned friend you should stand the matter down so that my learned friend can get proper instructions before he answers you.

THE COMMISSIONER:

I think Mr Ormsby is capable of looking after himself.

MR KAUFMAN:

I just thought I would assist.

THE COMMISSIONER:

I appreciate your attempt, Mr Kaufman.

MR ORMSBY:

It is not as simple as he thinks: it is federal management committee decisions and members were drawn from all states from this meeting yesterday and as a result of that they instructed me to make that statement today.

THE COMMISSIONER:

It is a real question that I put to you, is it not?

MR ORMSBY:

I can indicate that I think there are a number of persons in the union who think that the proposition you are putting is correct.

THE COMMISSIONER:

Namely, that the union is concerned in this business at the hotel?

MR ORMSBY:

No, I am not talking about the hotel. The proposition you are putting that they are using the attitude of the union to cover up activities completely unrelated.

THE COMMISSIONER:

I had understood from when you first applied to represent the union in Sydney that the union was not going to take the view that matters unconnected with the union would be covered by that resolution. What this resolution in this statement seems to suggest is a change of attitude.

MR ORMSBY:

It apparently now happens that they have taken this attitude. I think obviously from that statement they have taken this attitude as their way of protesting against what they see as the way the commission has been heading and from speaking to members of the management committee I think one of the big bones of contention and one of the matters that is concerning them more than anything is the fact that witnesses are being called and they have not had the opportunity to cross-examine them at that time when they are actually giving their evidence.

THE COMMISSIONER:

That is a matter I would be happy to discuss with you and I have not been able to discuss that with anyone since the union withdrew its representation in June last year.

MR ORMSBY:

The other situation which is apparently of real concern is that they are not being allowed to have their representations behind all these hearings.

THE COMMISSIONER:

I am forbidden by law to have the union present when I am looking at taxation files.

MR ORMSBY:

I appreciate the problem there, but the union has obviously taken another view. I appreciate that it is a very difficult position.

THE COMMISSIONER:

Insofar as the Station Hotel is concerned, the evidence I have at the moment relates to Mr Lowe and Mr Holman. Mr Holman is a member of the Victorian executive and the allegations made against them relate to threats, relate to activities of the hotel and SP bookmaking, threats against the owners of the hotel. I am asked to draw an inference as to the impact of those threats on the business of the hotel since evidence was given. That is another matter.

In the ordinary course I would expect to hear from Mr Dix or Mr Sproule - certainly from Mr Holman and Mr Lowe - to say that that evidence is not true. Certainly from Mr Sproule and Mr Dix I would expect to hear that if that is the truth it has got absolutely nothing to do with the union even if it is true that it is not union business. Here I am faced with uncontested evidence, except to the extent that it is attested by cross-examination. I am not supplied with any evidence from Mr Holman or Mr Lowe or other union officials. Why should I not draw the inference that the evidence given by Mrs Cooper and other people is correct and the further inference that the direction by the union not to allow its members to give evidence in relation to that or any other matter is an indication that the union is connected with that matter?

Then I go further and I would be putting to you in due course that the fact that the union chooses to go out on a national strike over the issue of this hotel compels me to the conclusion that there must be some union business which would base the strike - otherwise it is a strike with no justification. I mean, you do not go out on strike because a painter and docker is charged with and convicted of drunk driving and goes to gaol. The union would never suggest that they would.

MR ORMSBY:

I can only say I have been given certain instructions and they say that they have democratically arrived at the decision they have made. I know that they do receive the transcripts and perhaps what you have said today will be considered and given due consideration. I am unable to go further than that.

THE COMMISSIONER:

There were some other matters I wanted to raise with you. I do not propose to take up with you all the criticisms of the commission at this stage. I have dealt with them on a number of occasions over the last 12 months, but there was reported in the newspaper last week a letter alleged to have been sent by Mr Gordon to various politicians and trade union leaders. Do you recall that letter?

MR ORMSBY:

I have not seen that letter.

THE COMMISSIONER:

It was a lengthy letter, four pages or three and a bit pages, in about April of this year. It was reported quite fully in the media last week.

MR ORMSBY:

We do not get any reports in New South Wales.

THE COMMISSIONER:

I do not understand why that is so.

MR ORMSBY:

It is just a fact of life: it gets very little press up there.

THE COMMISSIONER:

There are a lot of statements in that letter that I would wish to take up with you at an appropriate stage. For example, it was stated on page 3 of that letter:

We were deprived of legal representation because the commission barred our counsel, Mr Frank Galbally.

That is quite untrue, as you know, Mr Ormsby.

MR ORMSBY:

Was that letter supposed to be made public?

THE COMMISSIONER:

It was in the newspaper.

MR ORMSBY:

I do not know how it got there.

THE COMMISSIONER:

I do not know how it got there either. The headline is of great interest - - -

MR ORMSBY:

You say that letter was written in March or April - it appears in June in the newspaper.

THE COMMISSIONER:

One can only assume that it was leaked to the press by some person or another.

MR WILD:

I can make a copy of that available to Mr Ormsby so that he can read it.

THE COMMISSIONER:

Thank you. There are a number of matters in that that at an appropriate time I would like to take up with you. No doubt the federation has got a carbon copy of the actual letter, which would be more accurate than the extract or it would be fuller than the extract. One of the things that Mr Gordon said in that letter in paragraph H on page 3 as regards the allegations of violence and murder was that, and this is line four:

The only murder which has been proven
. our late Victorian
secretary, Pat Shannon.

Of course that is not true either, Mr Ormsby, is it? The only grain of truth in that is that that is the only murder in respect of which conviction has been achieved. There have been a lot more murders than that, have there not?

MR ORMSBY:

Yes, people are not.

THE COMMISSIONER:

I can identify 15 murders between 1970 and 1979.

MR ORMSBY:

I think we should be realistic, Mr Commissioner. The painters and dockers is a working man's union and it is a hard life and it attracts a certain type of person and things do happen under those circumstances, but that is not necessarily to say that it is the painters and dockers who have organized a crime syndicate as such. It might well be that it is the circumstances under which they live and work. It brings about the likelihood of more of these situations happening then, say, with those people who are employed in the professional field. It is a fact of life.

THE COMMISSIONER:

One does not avoid the reality of it by saying that it is a fact of life. What happened in 1971 can only be described as mayhem and it was associated with a union election.

MR ORMSBY:

Were not those ballot boxes spoken about by Mr Longley found and produced to the commission?

THE COMMISSIONER:

Yes, Mr Nicholls had them.

MR ORMSBY:

My recollection is - as I was informed - that they showed that some allegations by Mr Longley were not in fact correct.

THE COMMISSIONER:

That may be so; that is something I would need to investigate, but the fact is that Mr Nicholls had in his possession and ready to give to the commission at the time he died the actual ballot papers of the election, which may well have supported - - -

MR ORMSBY:

They did not actually get to the commission? I thought they did.

THE COMMISSIONER:

They came to the commission since he died.

MR ORMSBY:

My understanding is, talking to members of the management committee, that Mr Longley's evidence was not strictly correct - - -

THE COMMISSIONER:

You may be right; I am sure Mr Kaufman may have something to say. Of course it was with good reason that Mr Nicholls would have been anxious to come back to the commission and give this evidence. What I am suggesting to you is: it is no good saying these men in the union are different from professional men, they work harder and therefore you might expect a different pattern of behaviour, where I find a pattern of behaviour of fifteen murders between 1970 and 1979; in addition there are a further twenty-three incidents in which death may have resulted and which appeared to be the intended result, in almost all cases guns being used.

MR ORMSBY:

I am not getting it across to you, Mr Commissioner; perhaps if you would like me to address specific matters which you require of me - or I can get some assistance. I would have to get approval for that. It may well be that one of the problems - - - We may be running into a situation - - -

THE COMMISSIONER:

The best assistance I can get is for people who have been subpoenaed to answer questions. I have to say to you, representing the union, I propose to recall Mr Holman and Mr Lowe to answer questions I have directed to them in relation to the hotel and if they propose to fall back, as a basis for not answering those questions, on the resolution of the direction of the union, then the union will have to live with the inferences drawn. There is the very serious matter of the allegation of the men threatening the operator of the hotel, causing her a great deal of concern, fear and trepidation. If the union uses its authority to direct and/or persuade those men not to comply with the law and not to answer

questions, the union may have to accept the inferences that are drawn from it. I would not want your client to be under any misapprehension as to what is the likely inference to be drawn from the maintenance of their resolution.

MR ORMSBY:

I have not had the opportunity of reading the transcript.

THE COMMISSIONER:

I think it may be necessary, Mr Ormsby, for me to take this up with you again.

MR ORMSBY:

If I had notice of some specific areas.

THE COMMISSIONER:

I might need to give you an indication in advance of the specific matters I would like you to address your mind to and seek instructions on, and things to be sorted out, because it is going to be a continuing problem as witnesses are called and matters that may appear on the surface not to be connected with the union become connected because of the attitude and the resolution of the union in relation to those matters. I will not take it any further now, but I do propose to take it up again. Do you wish to say anything, Mr Kaufman, or do you wish to reserve your rights?

MR KAUFMAN:

Reserve, sir.

MR WILD:

There is one matter I would remind you of and that is in respect to a letter which was tendered by Mr Ormsby and which I referred to earlier. It was a letter to the Attorney-General on 23 April 1982. The reason I refer to it is because it exposes the problem we have in trying to understand the union's position here today. If there is never to be evidence of the union meetings at which the various resolutions are put, it makes it more difficult for you to understand the way in which Mr Ormsby's client is treated in a particular matter that comes up. Although we have had a statement today in talking about the resolution, if no one gives evidence, none of those resolutions will be ever confirmed before

you; for example page 2 of the letter written on 23 April, a copy of which is on the screen and the letter which is now exhibit NSW665 - a letter written by Mr Ormsby's firm. The first paragraph deals with the withdrawal of Galbally and O'Bryan from the Commission and referred to there as being at the instigation of the Victorian branch. The implication of that is that the federal branch itself was not involved, but merely accepted the position - -
- There is reference to the annual conference of the union held in April and in the next paragraph there is concern expressed by the executive that people have been called, who are not parties to the union or connected with it, and in the last sentence of that paragraph the executive are concerned with the situation that has arisen whereby those persons endeavour to conceal their activities under the shield of the union. That is precisely the reply that has been applied to Mr Holman and Mr Lowe. The statement was made in that letter and in my submission that is the kind of thinking that Mr Ormsby should direct his mind to - or seek further instructions on - because those matters are clearly in relation to matters that the union - - -

MR ORMSBY:

The union is concerned with that matter,
but it is a fact that we have the other problem.

THE COMMISSIONER:

Thank you, Mr Ormsby.

6.14 I have set out these discussions at some length so that the true position will be apparent. The union is the body with which this Commission is primarily concerned. It is of great importance that it should be fully represented. The Commission has always taken that view. So has the Government. No obstacle has been placed by the Commission in the way of such representation. The difficulties that have occurred are entirely the product of union decisions and the confused understanding of the firm of Galbally and O'Bryan of its proper professional position. Neither of these matters reflect credit on the parties concerned.

CHAPTER SEVEN

FACILITIES OFFERED BY THE UNION

7.01 In both my First and Second Interim Reports I made reference to the ability of the Union to offer facilities which were of great value to people who wish to hide both their activities and their identity. Both these Reports I asked Government to keep confidential and I would not wish that they be made public as yet. Nonetheless in this area it seems to me that it is appropriate for a better understanding by the public that I should incorporate into this Chapter and up-date some of this material.

7.02 It is no doubt true that the ability to provide some of the facilities which I will refer to have their base and can be explained by the history of the Union. There is equally no doubt that the tradition of mateship and the ghetto mentality is grounded in the industrial repression and appalling working conditions under which painters and dockers were required to earn their living in the early part of this century. In the light of this history the insistence by the Union for example on maintaining strict control of the pick-up centre is understandable. Whether it is any longer appropriate, having regard to the Union's ability to use modern industrial weapons is another matter altogether. However the ability to provide these facilities takes on a different complexion altogether when, as in Victoria, the Union is under the control of hardened criminals. On 24 May 1981 a document was produced before me (Exhibit Vic. 355) setting out the criminal histories of the officers of the Victorian branch of the union. It may require some up-dating to the present time but the figures there set out will indicate the nature of the problem.

7.03 At that time the number of members of the union holding office was 11 and each one of them had a criminal record. The average age of those officers was 51 years ranging from 31 to 61. The total number of convictions recorded was 251 producing an average per person of 23 convictions. The person with the lowest number of convictions had only three, the one with the highest had 61. Only two of the eleven had not served prison sentences, the other nine have between them served 41 years and 7 months producing an average of four and a half years per man. All but two of the men have at some time or other used false aliases.

7.04 The propensity of members of this union to work under and use different names is notorious. The late secretary of the union, Mr Jack Nicholls, for example used the names of Mills, Henderson and Mather among others. This use is by no means confined to Victoria. Examination of the New South Wales membership ledger reveals 157 changes of name by members of that union, some of them, on the same day, changing their names to other members of that branch, and several changing names to the one name which was then shared by all. By way of example, and there are many of them, on 3 February 1975 at a meeting of the union committee the following name-changing exercise took place:

<u>NAME</u>		<u>NAME</u>
<u>At beginning of meeting</u>		<u>At end of meeting</u>
P Rigby	to	F Arapa
D Sciancaleroro	to	G Azzopardi
J Zahara	to	F Azzopardi
J Dimech	to	J Barbara
A Muscat	to	F Barbara
J R Swanick	to	J Becsi
G Mancuso	to	V Bivilacqua
M Tanti	to	Joseph Borg
K Pavy	to	A Burgess

<u>At beginning of meeting</u>	<u>NAME</u>	<u>At end of meeting</u>	<u>NAME</u>
B C Bean	to	Michael F Caintar	
L O'Toole	to	T L Coombes	
F Cauchi	to	F Cortis	
L Loades	to	G D'Amico	
V Ruggero	to	S Dell'Elba	
J E Clark	to	A F Denny	
S Fasasci	to	G Dimento	
O Aspervick	to	L D'Louhry	
C Borg	to	P Falzon	
J Hansen	to	M Farrer	
W Snowden	to	N D Fitzgerald	
M Abela	to	Anthony Galea	
C Farrugia	to	F Galea	
B Merlino	to	P Iacono	
J Hawthorne	to	J Jewiss	
R Mason	to	R A Lennon	
T Saliba	to	S Mercieca	
G Lockeridge	to	J Montgomery	
N R Morrall	to	Leon Morris	
S Coombes	to	Les Murray	
J Azzopardi	to	J Muscat	
L Valpicella	to	C Pappalardo	
F Noonan	to	Kevin Redford	
P Palumbo	to	A Restuccia	
L T Ryan	to	L Robertson	
M Sirone	to	G Scibilia	
S Borg	to	S Spiteri	
J Williams	to	J Stormont	
J Cameron	to	F Thompson	
M Best	to	D Tutty	
V Buttigieg	to	Luke Xuerab	
E Basillio	to	Benito Zaia	
F Saliba	to	J P Zammit	
C Muscat	to	J Zammit	

7.05 In my Interim Report No 2 dated 29 July 1981 I adverted to this matter again. Perhaps I should repeat for this public Report such part of that confidential Report which I now feel free to set out. In Chapter 5 of that Report the following passages appear:

"In the March 1981 Interim Report, reference was made to the apparent provision of false identities by union branches for their members. There is also reference to a particular instance of this in Chapter 3 of this Report.

Thus far the Commission's major enquiries have involved the branch in Victoria. A comparison of the records of the union in that state dealing with membership and with those of the Williamstown Naval Dockyard indicated that in eight separate instances men who had died were subsequently transferred from Victoria to other branches of the union in Australia. Death certificates for these men were obtained. Confirmation was thereby established of death, presuming the death certificate itself was legitimate and it referred to the person correctly identified as the deceased in the certificate. Thus, it is improbable that the union records indicating the man was still alive and transferring his membership were accurate.

The Commission was therefore interested to establish the basis of these "transfers". It was not until April of this year that one of the "dead men" was identified as having worked in another State using the identity which apparently had been assigned to him. This was "Allan Bees" referred to in Chapter 3.

Knight

In the case of Bees/Andrews/Knight the identity was created for the purposes of allowing him to escape proper identification in New South Wales. Theoretically it was necessary for the man if he wished to obtain employment as a member of the union in New South Wales to be a member of the union. It appears that a man transferring from another state has his entry into the branch thereby facilitated. It is a method of reference and certification, as it were, of his suitability for membership of the union.

In the case of Bees the Union Executive in New South Wales was entitled to act on the certificate of transfer provided by the Victorian Branch and to accept this man on the face of the certificate as "Allan Bees". The man himself confirmed as much in his evidence and did not attempt to join the New South Wales branch as part of any conspiracy to provide him with the false identity. He claimed the purpose of obtaining the false identity and the union number was to facilitate an entry by him

into the New South Wales Union and thereby obtain work. As he had obtained the transfer in March 1980 and not obtained even a casual job until September 1980 the conclusion is irresistible that some other purpose was involved in obtaining the false identity. The fact is the man only worked one day in September and only a few hours on a day in October before claiming compensation for an injury.

Further investigation indicated this man's real name was Knight and he was wanted in respect of twelve unexecuted Warrants in the State of Victoria which, if executed on him, would result in him serving nearly four years imprisonment in Victoria. Strangely enough, at the same time he was using the name "John Andrews" in the State of New South Wales under which name he was known to the New South Wales Police and was facing two separate charges involving dishonesty. He was wanted also for absconding from bail in London in 1979 on a shoplifting charge under the name of Andrews. It appears that the New South Wales Police had no knowledge that the man "Andrews" was identical to "Knight" who was wanted in Victoria.

Furthermore Knight had opened bank accounts with the Bank of New South Wales at Coogee in 1980. He had two accounts at the same bank, one in the name of "Andrews", and the other in the name of "Allan Bees". It appears from bank records that he produced "his" union book in the name of Allan Bees at the time of opening the account in that name as proof of identity.

Knight described himself as a punter and, if that is to be believed, he appears to have been a fairly successful one. Certainly the cash flow in excess of \$36,000 passing through his accounts in the 12 month period indicates a level of success. It also makes it surprising that he would want to work as a Painter and Docker particularly on the two jobs which involved cleaning the stables on board Union Bulkships vessels following the passage of horses across the Tasman Sea. The only logical conclusion is that Knight hoped to use the false identity as a means of giving him an

alias for occasions when that might suit his purposes; alternatively, to facilitate his entry into the union workforce on the Sydney Docks when he might be able to fabricate a workers' compensation claim and thereby have a steady income while pursuing other activities of a less strenuous but more financially rewarding nature.

It is very difficult to disprove a claim made for workers' compensation. All that need be said is that Knight had a medical examination in April 1981 by a Specialist appointed by the Insurance Company handling the workers' compensation claim. He wore a neck brace to the appointment but dispensed with its use almost immediately following the examination. Furthermore, the claim itself was viewed with some suspicion by those handling it without there being any precise evidence on which the claim could be satisfactorily rejected.

It is important to recall this man obviously had a close relationship with Leo Peter McDonald who is referred to in Chapter 3. McDonald is the Welfare Officer with the Victorian branch. Knight was a known associate of Nat Theodore who is also a member of the union in Victoria and presently on bail on a charge of attempted murder. He is on workers' compensation and has been for three or four years. The man Bees who died in Victoria in December 1979 was well known to the Union Executive. The former Secretary, Jack Nicholls, attended the funeral. It could hardly be said that the fact of his death was not known to the union. In those circumstances the transfer of this man's identity for him can only be viewed with the gravest suspicion. When it is recalled that Knight was wanted in Victoria to serve prison sentences then the question of a conspiracy to pervert justice arises. The evidence before the Commission is that the union books in Victoria are completed by either the Secretary or the Vigilance Officer, Douglas Sproule. In those circumstances there is no doubt that either Nicholls or Sproule arranged for the transfer of the dead man's membership. There can be no innocent explanation for it.

Bissett

The further case involving Anthony Michael Bissett is of even greater significance. This is because it involves union branches in other states which must have been privy to the false identity created in Victoria.

Rhodes (also known as Cusack) died in Melbourne in September 1978. Rhodes was a member of the union. His union number was 2664. Despite his death, on 25 January 1979 Rhodes was granted an open transfer.

Anthony Michael Bissett is the son of Douglas Maxwell Sproule the Vigilance Officer of the Victorian branch of the union. Sproule and his wife have been divorced and she had re-married Bissett. Anthony (also known as Tony) Sproule had thereafter taken the name "Bissett". Late in 1978 Bissett is alleged to have stolen a thousand dollars from a savings pass book. He was also charged with drink/driving offences. He had previous convictions for both drink/driving and dishonesty offences. He was due to appear in Court on 22 January 1979. He was then employed at the Williamstown Naval Dockyard as a painter and docker. He was a member of the union and his number was 2639. Bissett did not wish to appear in court in January.

In 1980 Anthony Michael Webb, union number 2664, was injured at work. He was working for an employer, Middlemass, in New South Wales. An examination of his claim form for compensation indicated this man was identical with Anthony Michael Bissett from Victoria.

A full investigation then ensued which involved a check of all employer's records in the custody of the Commission in Newcastle, Brisbane and Sydney. A check was also made of the records of the different branches of the union in those locations. Using this material it was possible to trace the movements of Bissett from January 1979 to date.

Bissett had been bailed to appear at court in Melbourne in January 1979 and had absconded from that bail. By the end of the month he was working in Newcastle under the name Rhodes. He

stayed there for some months before moving to Queensland where he again used the name Rhodes and worked with various employers there. In both Newcastle and Queensland he appears in the Union Books as a transfer. Despite his union book describing him as Keith Rhodes he apparently was known as Tony and/or "A. Rhodes" at those branches. It should be recalled this man is the son of Sproule. Sproule is well known to Winning, Secretary of the Queensland branch of the union. Similarly Sproule is known to Sam Milne, Secretary of the Newcastle branch and Australian President of the union. It seems surprising that they would not know Bissett was Sproule's son. Nevertheless the registration of Bissett in the name Rhodes was in both those places.

Following a period of two months or so in Brisbane Bissett returned to Newcastle in early 1980, then transferred again from Newcastle to Sydney. His name appears regularly in the Newcastle Union Roster Book and also in employer records. Surprisingly it does not appear in any of the New South Wales records under any name known to the Commission. As previously indicated, however, he was allocated work it seems by August of 1980 when he suffered the injury previously mentioned.

No explanation has as yet been given, or asked for, as to why Bissett does not appear under any of the known names or union number in the Sydney records of the union. It must be assumed that to be assigned work in the Sydney Port he attended the Roster and met either Wyner, the Secretary of the union, or Galleghan who is the Vigilance Officer. In either case both men are familiar with Sproule and may be expected to know Bissett is his son.

Bissett was subsequently located in Tasmania and extradited by the Victorian Police to answer his bail on the two charges which are still extant. He appeared before the Commission, on subpoena, in Hobart on 3 June 1981 and subsequently in Melbourne during the following weeks. Bissett was not prepared to identify who allocated him the false identity which enabled him to escape identification interstate. However he did concede in evidence that it had to be either the Secretary or the

Vigilance Officer. Because of the identity of this particular man and his relationship with the Union Executive in Victoria and interstate it is clear that the union leadership was very much involved in maintaining his false identity. It is clear that the leadership of the union in other branches at least co-operated to that end.

Wilson/Spiller

A separate fraud using false names was exposed in Commission hearings in early June. This involved one man making two separate claims for workers' compensation against different employers but covering overlapping periods of employment.

John Joseph Spiller employed at Duke & Orr Dry Dock Pty Ltd, claimed to have been injured at work in October 1976. He subsequently made a claim for workers' compensation. Pursuant to this claim he was paid weekly amounts up until March 1978 when the claim was redeemed for a total sum of \$8,000.

In September 1977 Peter John Wilson was injured at work at United Ship Services Pty Ltd. He was subsequently paid workers' compensation until July 1980. He issued a Supreme Court Writ for damages arising out of the same injury claiming negligence on the part of the employer. The work records of United Ship Services disclosed that Peter John Wilson had been employed there during most of 1977.

Guido Dennis Spiller in giving evidence to the Commission in June admitted that he was identical with John Joseph Spiller and Peter John Wilson. He claimed to have used the pseudonym Peter John Wilson because "it was there". By this he meant that the name was already registered in the work sheets of USS and was therefore "available" for him as a false alias. He admitted to not disclosing to the insurance company his return to work. He admitted that he had not disclosed to the common insurance company when making either of the claims for compensation that he had previously suffered a separate injury some years earlier whilst employed in a non-related industry.

Although Spiller did not appear to be of any significance in the union leadership prior to June 1981 police sources have indicated that subsequent to the death of John Nicholls he has assumed an apparent role as the guardian of the Vigilance Officer, Doug Sproule. In spite of the unfortunate accident and injuries sustained by Spiller during his employment as a painter and docker he still maintains a fairly active physical life and has a black belt for karate.

The correspondence passing between the solicitors acting for Spiller and the insurance company solicitors have been perused. It is quite clear that Spiller is prepared to abandon his common law claim for damages. This follows the apprehension by him, it is clear, that the insurance company had identified his alias. The solicitors acting for Spiller both under the name of Wilson and Spiller are Messrs Galbally and O'Bryan. Present material before the Commission indicates that two separate employee solicitors from that firm acted for Spiller under each name.

Spiller's foreman at USS was James Roland Wilson. He apparently is no relation to "Peter John Wilson" although he is clearly on close personal terms with Spiller. Spiller returned to work earlier this year at USS and now works there under his correct name. He is part of the gang which James Wilson leads.

James Wilson also gave evidence to the Commission. He was initially called merely to identify Spiller under the name of Peter Wilson. However it became apparent that he was a very powerful man in so far as the allocation of work is concerned at USS. The Company leaves it almost entirely to him to obtain his own gang and to notify the company of the employment of any new man. He is therefore in a position to "identify" the man. And, for that matter, allocate aliases. The sum total of the evidence of Spiller and James Wilson before the Commission left the clear impression that it was James Wilson who had made available the alias "Peter Wilson" for Spiller. Apart from the obvious assistance this gave Spiller in perpetrating the compensation fraud it is also a ploy which would assist in carrying out unemployment and kindred social services frauds.

A preliminary investigation of the financial affairs of James Wilson indicates means beyond that which he reasonably would be expected to have. The occupation by him of a unit which he is purchasing in Punt Road, South Yarra, gives rise to further interesting possibilities as far as his financial position is concerned. Substantial amounts of money have also passed through his bank accounts in the last two years or so.

Wilson's relationship with his employer USS and his apparent means is of added interest as the Commission has previously had evidence of another wealthy foreman employed at USS. Alfred Charles Wright who died early in 1980 and who was a former foreman at USS left property declared for probate as worth \$287,000. These assets included three residential properties and substantial sums in bank accounts. It may be that James Wilson has inherited Wright's role within the employment structure of USS.

The Commission has noted an abuse of the roster system in the Victorian Branch. It is not intended to deal with that in detail in this Report. It is only necessary to say that the abuse and non-use of the roster system over the last five years has enabled foremen like Wilson to be put in a powerful position. It cannot be said that the fraud perpetrated by Spiller is directly attributable to the Union Executive. However, it is the non-enforcement of the roster system which has allowed James Wilson to assist union "members" directly employed by him to assume false identities with the attendant results.

Conclusion

An examination of the membership records of the New South Wales branch indicate that almost every member of the union has at various times used another name. Evidence was given by Wyner, New South Wales Branch Secretary, that this practice had ceased some years ago. At least in the cases of Knight and Bissett it appears that the practice has not ceased. Even if not actively involved in the provision of false identities the New South Wales branch has still - in two cases investigated by the Commission - been prepared to give tacit approval to the false identification.

It is clear the use of false names does facilitate the perpetration of other frauds; for example, making multiple workers' compensation claims using different names and making false claims for unemployment benefits or other social services. Furthermore - as demonstrated in the two cases investigated by the Commission - it enables an offender to escape apprehension and detection.

As indicated there are a number of other cases where "dead men" have been transferred interstate. Whether the Commission will have the time to investigate each of those transfers is not yet clear. The investigation of them involves substantial tracing of movements interstate and time may not permit that to be done. However, the information which the Commission has obtained will prove of great assistance to Police Forces in endeavouring to locate fugitives from justice."

7.06 Perhaps it would be useful to list the various aspects of the union's organisation and activities which create problems:

- (a) The ability to provide a new name and a new identity speaks for itself.
- (b) A refinement on (b) is the ability to transfer the man with the new name and the new identity interstate and to find employment for him.
- (c) In addition the union has a tradition of providing financial support for its members. I am not to be taken at all as suggesting that there is anything wrong with the self-support for members when in trouble. Indeed there is a good deal that is praise-worthy in this attitude. But the evidence is clear that the union is able to, and in fact does, provide financial support for men who are in trouble with the law both by way of providing funds to assist their legal defence and financial support whilst they are in hiding from the law. Such support does not appear to be limited to members of the union as is shown in the case of Mr Durston.

- (d) The 'Code of Silence', known in other countries by different names, has the effect that members of the union who may be guilty of the most flagrant criminal offences can take comfort in the fact that no other member of the union will give evidence against them. A classic and oft-quoted example of this was the murder of Harrison in front of dozens of painters and dockers none of whom, when questioned by the police, were able so they said to give any evidence of the event. The success of this code is demonstrated by the material which I have set out in Chapter 6. Of all the murders, attempted murders and other violence only one conviction has been recorded and that was in the case of former Secretary, Shannon, where the unique situation occurred of a member of the union giving evidence against other members. The very fact of that occurring is enough to cause considerable disquiet and to raise the question as to why in that single case that event should have taken place.
- (e) The use of one or more of these facilities enables with great efficiency the hiding of wanted criminals. This has been done with great efficiency and men wanted for very serious crimes, indeed on occasions men who have been convicted of serious crimes and are waiting to serve their sentence, have been kept away from law enforcement agencies for years.

There can be no doubt on the evidence that these facilities are available to members of the union. What may be of even greater concern to the community is the knowledge that these facilities are available to other persons, not being painters and dockers.

