

RECEIVED 13 AUG 1986



HON. JOAN CHILD, M.P.
PARLIAMENT HOUSE
CANBERRA 2600.
TEL. (062) 72 6893

11 August 1986

g. x l.
14.8.86

The Hon Sir George Lush
Presiding Member
Parliamentary Commission of Inquiry
GPO Box 5218
SYDNEY NSW 2001

Dear Sir George,

I acknowledge receipt of your letter dated
6 August forwarding a special report of the
Parliamentary Commission of Inquiry.

Copies of the report were sent to the leaders of
the parties represented in both Houses of the
Parliament on 6 August.

Yours sincerely,

SPEAKER

Mr Ross
→ file

PRIVATE AND CONFIDENTIAL

Senator the Hon. Douglas McClelland
President of the Senate
Parliament House
CANBERRA ACT 2600

Dear Mr President,

As contemplated at our meeting on Monday, 4 August, I am enclosing a Special Report of the Commission, which covers the effect of Mr Justice Murphy's illness upon the Commission's proceedings.

The Special Report was available yesterday afternoon but I understand that you requested it be delivered to you today at your office in Sydney.

Yours sincerely,

(Sgd)

Sir George Iush
Presiding Member

6 August 1986

PRIVATE AND CONFIDENTIAL

The Hon. Joan Child MP.,
Speaker of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Madam Speaker,

As contemplated at our meeting on Monday, 4 August, I am enclosing a Special Report of the Commission, which covers the effect of Mr Justice Murphy's illness upon the Commission's proceedings.

A copy of the Special Report was transmitted by vocadex to your office in Canberra yesterday.

Yours sincerely,



Sir George Lush
Presiding Member

6 August 1986

PRIVATE AND CONFIDENTIAL

The Hon. Lionel Bowen, M.P.,
Attorney-General and
Deputy Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I am enclosing for your information a copy of a special report that I have today sent to the President of the Senate and the Speaker of the House of Representatives.

Yours sincerely



Sir George Lush
Presiding Member

6 August 1986


PRIVATE AND CONFIDENTIAL

The Hon. Michael J Young MP.
Special Minister of State
Parliament House
CANBERRA ACT 2600

Dear Minister,

I am enclosing for your information a copy of a report that I have today sent to the President of the Senate and the Speaker of the House of Representatives.

Yours sincerely


Sir George Lush
Presiding Member

6 August 1986

Special Report of the Parliamentary

Commission of Inquiry

1. At our meeting yesterday it was contemplated that, after the sitting of the Commission which was scheduled for today, 5 August, the Commission might make a report to you in the light of events at the sitting.
2. At the sitting this morning, counsel for the Judge tendered a statutory declaration to which was exhibited a copy of the medical certificate which you have already seen. On this material, supported by statements from the bar table that the Judge was unable to travel, counsel applied for an adjournment of hearings until Parliament next sits.
3. This application was granted, the Commission adjourning further hearings until 19 August or such later date as might be fixed by notice to the Judge's solicitors.
4. The illness of the Judge, in combination with time factors, raises the question whether the statutory task set for the Commission can be discharged.
5. The situation which existed at the date when the Act became law, 13 May 1986, was such that Parliament regarded the task allotted to the Commission as one of national importance. That situation remains unchanged. The Commission, through counsel assisting it, has considered a great quantity of materials which, in combination with further inquiries, has led to the drafting of "specific allegations made in precise terms" [Act, S.5 (2)]. Those completed have been delivered to the Judge. Some are still in preparation. Evidence on the first allegation to be considered was to begin today. In the result no evidence has been heard and therefore nothing decided.

6. Counsel assisting the Commission estimate that the hearing of evidence on all present allegations, including cross-examination, up to the stage at which the Judge might be called upon to give evidence [S.6(1)] would last at least four months, and possibly much longer. The Act fixes 30 September 1986 as the date for the making of the Commission's report, but under S.8(2) that time may be extended.
7. If Parliament were to leave the Act in operation, with the requirement that the Commission make its report by 30 September, the Commission might be unable to complete the hearing of evidence relating to even one allegation, and certainly would not be able to deal with most of the allegations. If no case to answer were disclosed in the allegations so heard, and they were in effect dismissed, the other allegations would remain in the air, and the situation which the Act was intended to correct would remain unchanged. If a case to answer were disclosed, the Judge could be required to give evidence and could be cross-examined. If the final decision were adverse to the Judge, the fact that most of the allegations remained unheard would lead to the result that the Houses would have incomplete materials for their further deliberations.

The Commission does not favour the course of selecting a few allegations for immediate hearing on the sole or principal ground that they could be rapidly disposed of.

8. If the Commission is to carry through its task to completion, it will be necessary for the Houses to extend time to a date not earlier than 31 March 1987. The prognosis of the medical certificate makes obvious the problems posed by this course. To continue hearings if the Judge were too ill to take part in them would be contrary to established practice and to natural justice.

9. The Commissioners understand that this report will, if the Presiding Officers so wish, be distributed to members of the Houses, and tabled in Parliament.

5 August 1986

----- Presiding Member

----- Commissioner

----- Commissioner

Senator the Hon Douglas McClelland
President of the Senate

The Hon Joan Child MP
Speaker of the House of Representatives



Parliamentary Commission of Inquiry

Presiding Member : The Hon. Sir George Lush
Members : The Hon. Sir Richard Blackburn, OBE
The Hon. Andrew Wells, QC

G.P.O. Box 5218
Sydney, N.S.W. 2001
Telephone: 232-4922

Special Report of the Parliamentary

Commission of Inquiry

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5 August 1986

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 Commissioner

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Senator the Hon Douglas McClelland
President of the Senate

The Hon Joan Child MP
Speaker of the House of Representatives

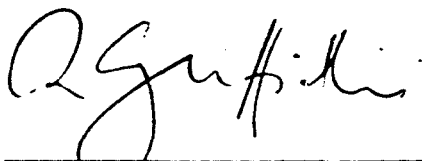
Mr Justice Murphy is a 63 year old man whose symptoms, enlarged liver and chronic anaemia, suggested carcinoma of the colon. This was confirmed by X-ray examination of the bowel and by colonoscopy.. The cancer has spread throughout the liver, as evidenced by clinical and ultrasound examination.

Carcinoma of the colon with diffuse liver involvement is a terminal disease. While it is difficult to prognosticate in any individual, the life expectancy for a patient suffering from this stage of colon cancer, without further treatment, is in the order of 3-9 months. Should chemotherapy be used, there is a limited (about 20%) prospect of prolonging his survival for a further period of months.

Mr Justice Murphy has been seen by the following specialists:

1. Professor William Doe,
Specialist Physician in Gastroenterology,
Department of Medicine and Clinical Science,
Woden Valley Hospital, Canberra
2. Mr Ray Hollings,
Specialist Colorectal Surgeon,
Royal North Shore Hospital,
Sydney

who concur with the above statement.



Rob Griffiths, MB BS (Mon), MRCP (UK),
46 Mugga Way,
Red Hill. Canberra.

1 August 1986

File Reference : A/22

Meeting with Presiding Officers - 4 August 1986

Following ^{the} letter dated 31 July 1986 from the Presiding Member of the Commission to the Presiding Officers of the Houses of Parliament, a meeting was held on 4 August in the President's Office in the Senate.

Present were -

- . Senator McClelland (President of the Senate)
- . Mrs Child (Speaker of the House)
- . Mr ^{A.} Cumming Thom (Clerk of the Senate)
- . Mr A R Browning (Acting Clerk of the House)

- . Sir George Lush (Presiding Member of the Commission)
- . Mr S Charles QC (Counsel Assisting)
- . Mr D Durack (Instructing Solicitor)
- . Mr J F Thomson (Commission~~s~~ Secretary)

After the preliminaries, Senator McClelland suggested that Sir George consider making a "Special Report" to the Presiding Officers on the matter of the Judge's illness and how it affects the Commission's proceedings. The report, as he saw it, could take into account the matters raised in the letter

Mr Ross
 20 go on file please.
 JF

Com Sir George of 31 July 1986. It could be made within 24 hours. He provided a copy of a medical certificate signed by Rob Griffiths MB BS (Mon), MRCP (UK) and queried the acceptability at law of such a certificate. He suggested that a copy of the report could be provided by him to the Leaders of all the major parties in the two Houses.

Sir George said there were some fundamental points that he wished to make -

The Houses chose three Judges to constitute~~d~~ the Commission, presumably because of their special knowledge of the matters to be considered by the Commission.

The subject ~~matter~~ is a matter of ^{national} Commission importance ^{and} ~~is~~, apart from the Judge's illness, the essential facts remain unchanged (this was expressly agreed by the Presiding Officers)

14 allegations have been presented to the Commission and the Judge so far; rendering them ^{specific} and precise has been a task for Counsel Assisting.

There have been references in the media to the effect that the allegations are "old stuff" (in particular by the Second Senior Counsel, Mr Einfeld). To some extent this is correct. However the Commission considered ^{its task was to see} ~~it was to say~~ what was really suggested in the mass of allegations and rumours ^{and whether} there was real evidence of allegations that could be produced in the required form.

The Commission also took the view that it was part of its duty to cover the range of allegations made for the purpose of clearing them away or finding them proven; it would be unsatisfactory to report that the Commission had concentrated on three or four things to the exclusion of others.

Referring to newspaper reports that, in sitting in court last week, the Judge was "cleared", Sir George said that it was quite impossible for the Commission to say either that the Judge was cleared or guilty at this stage.

The supervening event is the Judge's illness. It may be that the certificate provided by Senator McClelland would need to be backed by evidence on oath to support an adjournment.

It had been proposed that the first witness would be called on Tuesday 5 August. Mr Einfeld had indicated that cross examination of that witness could take up to 1 month. If the report were due in by 30 September as required, the Commission would have to finish hearing evidence by end of 1st week in September; this would leave about 10 allegations to be dealt with.

It was unlikely that there would be an extension of time for reporting beyond 30 September; but even if one were given, the likelihood of being able to take evidence from the Judge would diminish as time goes by. x

It follows that, if no extension is granted after 30 September, the proceedings would be futile; if extension is granted, the likelihood is that proceedings will ^{still} be futile. x

The President's suggestion was a radically different approach. It was not the Commission's responsibility to decide whether to proceed or not; the Commission had a statutory duty to perform. There may be criticism if the Commission did not proceed until told otherwise by the Parliament. If hearings were suspended and an extension were given, 2 weeks loss of time x

would be ~~at~~^{an} right. Alternatively the Commission could go on hearing the first witness but this was not satisfactory especially from a witness' point of view.

Mr Charles noted that there is a statutory mandate to ~~require~~ⁱⁿ require and report

Problem is, ~~given a~~^{the Judge} sitting ~~is~~^{and} this ~~is~~^{is} an inconsistency^t with not appearing before the Commission?

Undesirable to proceed to call witnesses.

Query whether in event of special report there should be ~~enumeration~~^{mention} of "options of futility."

Sir George:

On Tuesday whatever happens Commission will announce its ruling on misbehaviour (not ~~in~~^{to go} in report)

query include allegations in special report - note that the Commission now has 14 allegations to consider and that the ruling on misbehaviour has been given but reasons not published.

Mrs Child:

Parliament and Cabinet meet on Monday 18. Parliament resumes on 19 August. The report would not be ~~tendered~~ ^{tabled} until 19 August. If Parliament repealed ~~on proceedings~~ it could ^{not} be assented to until Thursday 21 August. This suggests an adjournment of the Commission until 22 August.

Senator McClelland:

The report should emphasise that the Commission has not passed judgement yet.

Mrs Child:

Is the Judge's ~~is~~ sitting on the High Court an embarrassment?

Sir George:

If evidence is presented as to the Judge's health, sitting on the High Court is not an embarrassment.

Mr Charles:

Natural justice requires attendance; sed quaere if Judge sits on the High Court. But if Judge has limited expectancy of life the question of futility emerges.

Mrs Child:

Issue press release ?

Sir George:

May be after tomorrow but it can be said to party leaders that it is certain the Commission will not join in any media debate. But something may be said, adverse ~~to~~ ^{to} a Commissioner, in which case a response cannot be ruled out. There will be no statement from the Commission prompted by any other media or academic comment. X

(Discussion following ^{ed} on possibility ⁱ of a press report arising out of the meeting under present report - ~~see~~ ^{see} press release ^{as} ~~is~~ finalised). X

It was agreed that the Commission would consider reporting by Friday 8 August so that its report can be considered by the Cabinet on Monday. The report would include.

reference to the effect of the Judge's health on the Commission's proceedings.

reference to the 14 allegations made so far | 2.

reference to the suspension of hearings

reference to the risk of futility whatever direction is taken.

Sir George raised the question of ^{the disposition} ~~a~~ deposition of material generated by the Commission, suggesting that it may be passed to the National Crime Authority.

Mr Thomson emphasised the need for some direction in any amending statutory ^e ~~ary~~, ^{(including perhaps as} ~~in particular see~~ to what should be done on the misbehaviour ruling). It was suggested that the documents in the hands of the Commission ^{be} ~~be~~ categoris^{ed} ~~ing~~ as to ~~its~~ nature ^{and} ~~as~~ means of disposition.

(J.F. Thomson)

2866A

also P.O.'s intend to seek advice from A.G. re what is to happen to documents - even provision in legislation to repeal the PC of INQ Act.

perhaps could add that McClelland believed or suggested that all Commission documents could be referred to Parliament & as it were remain in a confidential state as far as scrutiny is concerned.

8

The Hon. Kim C. Beazley, MP.,
Acting Special Minister of State,
Parliament House,
CANBERRA ACT 2600

Dear Minister,

I am enclosing for your information copies of letters that I
have today sent to the President of the Senate and the Speaker
of the House of Representatives.

Yours sincerely,



Sir George Iush
Presiding Member

1 Aug 1986



The Hon. Lionel Bowen, MP.,
Attorney-General and
Deputy Prime Minister
Parliament House,
CANBERRA ACT 2600

Dear Attorney-General,

I am enclosing for your information copies of letters that I
have today sent to the President of the Senate and the Speaker
of the House of Representatives.

Yours sincerely,

~~George Lush~~ (SGL)

Sir George Lush
Presiding Member

1 July 1985

AG

PRIVATE AND CONFIDENTIAL

The Hon. Michael J Young MP.
Special Minister of State
Parliament House
CANBERRA ACT 2600

Dear Minister

I am enclosing for your information copies of letters that I have today sent to the President of the Senate and the Speaker of the House of Representatives.

Yours sincerely

Sir George Lush
Presiding Member

1 August 1986

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Deputy Prime Minister
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Yours sincerely

Sir George Iush
Presiding Member

1 August 1986

PRIVATE AND CONFIDENTIAL

The Hon Joan Child MP
Speaker of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Madam Speaker,

The attention of the Commission has been drawn to press reports concerning the health of Mr Justice Murphy and, in particular, the report in the Financial Review of 31 July 1986.

In light of those reports, the Commission considered it to be not unlikely that an application would be made to it by counsel for the Judge for an adjournment of its proceedings. Counsel indicated today, however, that he had no instructions on the matter of an application for adjournment and that his instructions were that the Commission should be requested to proceed with all possible despatch.

The contrast between the media statements and the Commission's lack of any information on which it can act seems likely to create an unfortunate public relations situation.

S.14 (4) of the Commission's Act does not require that the Judge should be present at hearings, but it is fair to say that it contemplates that he will be able to attend and certainly contemplates that he will be able to instruct counsel. Moreover, S.6 (1) contemplates that if there is evidence of any allegation or allegations sufficient to require an answer, the Judge will be able to give evidence.

In the ordinary work of Courts of Justice a case would not be allowed to proceed if it were shown that a party was not capable of following the case and instructing his legal advisers. To do so would be contrary to established practice and to natural justice.

Not only has the Commission no evidence of the Judge's condition, but the latest press reports (The Mirror, 31 July) echo the statements that the Judge is anxious to proceed.

In this situation it seems inevitable that the Commission, and more importantly Parliament, will be represented as hounding the Judge.

The prospects for the effective performance of the Commission's task do not seem good. It does not appear possible that the Commission will even be close to completing its appointed task by 30 September. If the Judge's condition is as reported, as time goes by, it will become more likely that the Judge will in the end be unable to give evidence and to stand the strain of cross-examination. These considerations raise a question of the wisdom of continuing the Commission's operation. If it were thought desirable to terminate that operation, further questions arise, not least being the method by which termination should be achieved.

I would welcome an opportunity to discuss the existing situation with you in the hope that some satisfactory plan of action will be evolved. In the meantime the Commission must carry on with its statutory duty.

Yours sincerely,

Sir George Lush
Presiding Member

31 July 1986

PRIVATE AND CONFIDENTIAL

Senator the Hon Douglas McClelland
President of the Senate
Parliament House
Canberra ACT 2600

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I would welcome an opportunity to discuss the existing situation with you in the hope that some satisfactory plan of action will be evolved. In the meantime the Commission must carry on with its statutory duty.

Yours sincerely,

Sir George Iush
Presiding Member

31 July 1986



RECEIVED 21 JUL 1986

RECEIVED 21 JUL 1986

OFFICE OF THE
ATTORNEY-GENERAL
PARLIAMENT HOUSE
CANBERRA A.C.T. 2600

17 JUL 1986

Dear Sir George

Thank you for your recent letter to the Attorney-General enclosing papers that you have sent to the President of the Senate and the Speaker of the House of Representatives in relation to the Parliamentary Commission of Inquiry.

Yours sincerely

(John Richardson)
Private Secretary

The Hon Sir George Lush
Presiding Member
Parliamentary Commission of Inquiry
GPO Box 5218
SYDNEY NSW 2001

1 m/c
Pls B/F to Sir George
on arrival

20. F.T.
S.K.L.
21.7.86

Mr H D Nicholls
Acting Clerk of the Senate
Parliament House
Canberra ACT 2600

Dear Mr Nicholls,

I am directed to acknowledge receipt of your letter of 5 July 1986 and the enclosures that accompanied it.

Yours sincerely,



J F Thomson
Secretary

8 July 1986

Mr A.R. Browning
Clerk of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Mr Browning,

I am directed to acknowledge receipt of your letter of 5 July 1986 and the enclosures that accompanied it.

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'J F Thomson', with a long horizontal stroke extending to the right.

J F Thomson
Secretary

8 July 1986



PARLIAMENT OF AUSTRALIA
HOUSE OF REPRESENTATIVES

RECEIVED - 7 JUL 1986 16

PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600
TEL. 72 6370 TELEX AA 61640

OFFICE OF THE CLERK OF THE HOUSE

5 JUL 1986

The Hon. Sir George Lush,
Presiding Member,
Parliamentary Commission of Inquiry,
GPO Box 5218
SYDNEY NSW 2000

Dear Sir George,

We have been directed by the Presiding Officers to reply to your letter of 1 July 1986, and enclose for your information a copy of the proposed sitting pattern of the Parliament for the remainder of the year.

The Presiding Officers have asked us to express their appreciation of your courtesy in keeping them informed of the operations of the Commission.

We take this opportunity to make available to you also a copy of a telegram from Steve Masselos and Company, Solicitors, together with copies of 2 telegrams to Steve Masselos and Company which were sent at the direction of the Presiding Officers. These may be of interest to you.

Yours sincerely,

(H.C. NICHOLLS)
Acting Clerk of the Senate

(A.R. BROWNING)
Clerk of the House of Representatives

1. Mrs Ross
B/F to Sir George Lush
on hand. 14/7/86
7.T.
7/7
Seen by Sir George Lush
15/7
7.T.

2. Mrs Ross
→ A 22

PARLIAMENTARY SITTINGS PATTERN BUDGET 1986

(As at 13 June 1986)

MON TUE WED THU FRI

August

4	5	6	7	8
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

September

1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30			

October

		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	31

6 Oct Labour Day NSW & ACT

November

3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

4 Nov - Melbourne Cup

Possible extra week for Senate

December

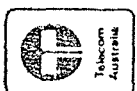
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	25	26
29	30	31		

School holidays

NSW, ACT, VIC 25 Aug - 5 Sept.
 Qld, WA 22 Sept - 3 Oct.
 SA, Tas 1 Sept - 12 Sept.

(McLennan, Sydney, etc.)

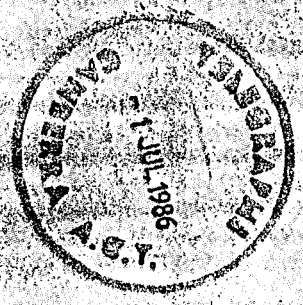
TELEGRAM



TELEGRAM

SYD800 SYDNEYNSW 111/ADT 01 1155

THE ACTING SPEAKER
HOUSE OF REPRESENTATIVES
PARLIAMENT HOUSE
CANBERRA ACT



PRESS REPORTS INDICATED THAT APPLICATION IS TO BE MADE BY COUNCIL
ASSISTING THE PARLIAMENTARY COMMISSION OF ENQUIRY RE MR JUSTICE
LK MURPHY SEEKING PROVISION OF FEDERAL POLICE FOR INVESTIGATIONS.
JUSTICE MURPHY OBJECTS TO SUCH POLICE SERVICE BEING MADE AVAILABLE
AS BEING CONTRARY TO THE AUSTRALIAN FEDERAL POLICE ACT AND THE
PARLIAMENTARY COMMISSION OF ENQUIRY ACT. IF SERIOUS CONSIDERATION
IS BEING GIVEN TO GRANTING THIS REQUEST WE SEEK AS SOLICITORS
FOR JUSTICE MURPHY THE OPPORTUNITY TO PLACE SUBMISSIONS BEFORE YOU
OUR CLIENTS BEHALF

SYDNEY

STEVE MASSELOS AND CO SOLICITORS 44 MARTIN PLACE

Handwritten signature

M



TELEGRAM



TELEGRAM

Steve Masselos and Company
44 Martin Place
SYDNEY

I have your telegrams of 1 July to the Presiding Officers. I have been instructed to inform you that no such application has been received by the Presiding Officers but should an application be received you will be advised.

Browning, Clerk of the House

Telegram
Sent 2/7/86

Steve Masselos and Company
44 Martin Place
SYDNEY

I have been directed by the Presiding Officers to advise you that while no application has been made to them for Federal Police to be made available to the Commission contact has been made with Fergus Thomson of the Commission who has indicated his willingness to inform you how the Commission intends to proceed [on the matters raised by you.]

Browning, Clerk of the House.

note my indication to Mr Nicholls, Deputy Clerk of the Senate, was (following discussion with Mr Weinberg, Mr Robertson & Mr Quack) that I was willing to inform the Solicitor that, in the meantime, the Commission is proceeding with the acquisition of investigating officers and with the conduct of investigations

F.T.
7/7

Discussed with Mark Weinberg.
OK to inform: proceeding to take on investigators and ^{with conduct of} ~~to~~ investigations
note also Mr Bowen has made public that Commⁿ has written to SMOS asking "special investigators" - see Australian 26/6/88

F.T.
7/7

Discussed also with David Quack
questioned whether I should advise Masselos that we had written to SMOS seeking provision of police officers
He agrees there are no problems in so doing
F.T. 7/7

1 July 1986

Senator the Hon D McClelland
President of the Senate
Parliament House
Canberra ACT 2600

Dear Mr President,

Parliamentary Commission of Inquiry

I refer to my letter of 25 June 1986.

On Thursday 26 June, Counsel for Mr Justice Murphy applied to the High Court in Brisbane for interlocutory injunctions restraining the Commission from continuing its activities, on the ground that the Parliamentary Commission of Inquiry Act, 1986, was unconstitutional, or for injunctions concerning particular aspects of the Commission's activities. The relevant aspects were the making of investigations by the Commission, and the possible consideration by the Commission of conduct of Mr Justice Murphy occurring before the date of his appointment to the High Court bench. The application also sought to have the Commission restrained from considering any aspect of Mr Justice Murphy's conduct which had not been the subject of a conviction in a court.

Earlier, Mr Justice Murphy's Solicitor, Mr S Masselos, in a letter dated 18 June 1986 to Counsel Assisting the Inquiry, sought assurances that no external investigation of any allegation would occur without a further hearing of the Commission. In the light of that request and to enable the Judge and his legal advisers to test the matter, the Commission refrained from instituting outside investigations or appointing investigators until after the High Court proceedings which took place on 26 and 27 June 1986 and in consequence of this the greater part of a fortnight was lost in so far as any inquiries, or the appointment of the persons to make inquiries, was concerned.

On Friday 27 June, the High Court rejected the applications for interlocutory injunctions, but fixed the dates 5 and 6 August for the substantive hearing of the proceedings. The official

transcript of Friday's proceedings is not yet available but a note taken at the time indicates that at the resumed hearing the Court will consider the validity of the Act, and the question whether the Act authorises the investigations the Commission has been making and proposes to make. It does not specifically indicate whether the High Court will deal with the further problems which arise from Section 72 of the Constitution. These questions appear to be whether the concept of misbehaviour includes only matters of behaviour for which criminal conviction has been recorded, whether alternatively it covers only matters of behaviour which fall within the prohibitions of the criminal law, and whether it extends to conduct of the Judge predating his appointment. All of these questions of the interpretation of Section 72 appear in an exchange of letters between the Judge's solicitors and Counsel assisting the Commission which were the basis of the application.

In the meantime, the Commission is proceeding with the acquisition of investigating officers and with the conduct of investigations. Although some media reports might give a different impression, the investigations which are being pursued arise from the materials which have come into the Commission's possession under the express authority of the Act, namely the reports of the two Senate Select Committees, the reports of the Stewart Commission, the materials in the possession of the Director of Public Prosecutions and the National Crime Authority, and other allegations which have been received by the Commission pursuant to advertisement or otherwise. The investigations are being directed by Counsel assisting the Commission and take the form of seeking out the witnesses who can support or refute or give significance to assertions concerning the Judge which appear in those materials, which in themselves are voluminous. They do not involve initiatives by the Commission seeking out new allegations.

This process is time consuming, and at the moment it is hoped that the "specific allegations in precise terms" to which Section 5(2) of the Act refers, will be delivered to those representing the Judge on approximately 15 July. I must stress that this represents a considerable endeavour on the part of the Commission's staff. The Commission will sit a day or two later to hear any initial submission which Counsel for the Judge may wish to make on the particulars, and there are some

reasons for thinking that it may be submitted that we should go no further until the High Court hearing in August has taken place. Whether we shall accede to such a submission will, of course, depend on what is put to us at the time. There are, however, grave possibilities that the hearing of evidence may not begin until a date well on in August. If that is so, the completion of the report by 30 September will be difficult.

I have no specific request to make at present. If it becomes clear that the Commission cannot effectively function unless an extension is granted, I shall, of course, inform you immediately, and I shall then make a specific request for an extension. In view of the fact that a granting of an extension depends on a resolution in each of the Houses, it would assist me to be told when the Houses will be sitting during the months of August and September.

I am writing in similar terms to the Speaker of the House of Representatives.

Copies of this letter are being sent to the Attorney-General and the Special Minister of State.

Yours sincerely,



Sir George Iush
Presiding Member

1 July 1986

The Hon Joan Child MP
Speaker of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Madam Speaker,

Parliamentary Commission of Inquiry

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I am writing in similar terms to the President of the Senate.

Copies of this letter are being sent to the Attorney-General and the Special Minister of State.

Yours sincerely,



Sir George Lush
Presiding Member

PARLIAMENTARY COMMISSION OF INQUIRY

GPO Box 5218
SYDNEY NSW 2001

Ph : (02) 232 4922

25 June 1986

Senator the Hon D McClelland
President of the Senate
Parliament House
Canberra ACT 2600

Dear Mr President

Parliamentary Commission of Inquiry

I write to inform you that counsel appearing for Mr Justice Murphy informed the Commission yesterday (24 June) that it was intended to approach the High Court to seek orders which if granted might terminate the Commission's task, or might in certain respects define the permissible limits of the Commission's activities.

Process has not yet been served, but it is believed that the Chief Justice has set aside time of the Court to hear the proposed application.

Speculation on the various possible consequences of this development would at this stage be useless. I shall write to you further as events develop.

Yours sincerely,

G. L.

Sir George Lush
Presiding Member

PARLIAMENTARY COMMISSION OF INQUIRY

GPO Box 5218
SYDNEY NSW 2001

Ph : (02) 232 4922

25 June 1986

The Hon Joan Child, MP
Speaker of the House of Representatives
Parliament House
Canberra ACT 2600

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G. X. L.

Sir George Lush
Presiding Member