

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

INQUIRY INTO THE ABORIGINAL DEVELOPMENT COMMISSION
FINAL REPORT

REPORT FROM THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON EXPENDITURE

MAY 1985

Australian Government Publishing Service
Canberra 1985

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ISBN 0 644 04191 9

Printed by Canberra Publishing and Printing Co., Fyshwick, A.C.T.

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1. The nominee of the Chairman of the Joint Committee of Public Accounts who, in accordance with clause (2) of the resolution of appointment, is a member of the Expenditure Committee.

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INQUIRY INTO THE ABORIGINAL DEVELOPMENT COMMISSION

FINAL REPORT

Background

1. In February 1984 the House of Representatives Standing Committee on Expenditure agreed to conduct an inquiry to review the efficiency and effectiveness of expenditure by the Aboriginal Development Commission (ADC). The terms of reference for this inquiry are set out at Appendix I. After extensive investigations, examination of submissions and other material, and hearings, the Committee tabled an interim report on its inquiry in October 1984. This interim report has been well received. The Committee understands the Minister for Aboriginal Affairs has submitted a favourable response to the Cabinet for its consideration. The Committee has conducted follow-up hearings at which the ADC and the Department of Aboriginal Affairs have advised the Committee on implementation of the report.

2. When the Committee tabled its report in October 1984, two further reports were foreshadowed: a detailed report on the matters raised in the interim report; and a confidential report

on a number of additional matters which were largely peripheral to the Committee's terms of reference. As the interim report has been well received and its implementation is in hand, the Committee believes that no purpose would be served by preparing the detailed report which was foreshadowed. It has thus agreed to prepare this final report to deal with the matters that were not examined in the interim report.

Inada Holdings

3. One significant matter raised with the Committee during its hearings was the operations of INADA HOLDINGS PTY LTD, an Aboriginal art and craft organisation. At that time the Committee did not examine the affairs of INADA HOLDINGS because they were the subject of court proceedings and thus sub judice. The Committee notes that a number of questions that it would have wished to raise about INADA HOLDINGS now that the court proceedings have been finalised were taken up by Senate Estimates Committee D on 23 April 1985 and answered in written replies to that Committee's questions. The report including that material was tabled in the Senate on 16 May 1985 and the Committee sees no reason to pursue this matter further.

Other matters brought to the Committee's attention

4. As noted above there were a number of matters drawn to the Committee's attention which the Committee wishes to deal with in this report. These matters were largely allegations made during in camera hearings and directed at individuals. Generally they were based on hearsay or anecdotal evidence. Very little first hand evidence was available.

5. To assist the Committee in assessing this evidence, the advice of senior legal counsel was sought. Counsel was asked to examine the evidence associated with the allegations, assess its quality and indicate whether, if proven, the allegations would indicate criminal conduct on the part of any person. Counsel, in

examining the material, noted that the allegations were often imprecise and had not been subjected to an investigation process and described the following matters as requiring further investigation:

- (i) the allegation that the Financial Advisory Consulting and Training Services had been set up by the ADC against the advice of the Australian Government Solicitor and that no repayments had been made on a loan of \$148 000 made to the Service by the ADC;
- (ii) the allegation that an ADC loan had been made to Mr David Nicholls in return for his withdrawing his candidacy for a National Aboriginal Conference (NAC) election to favour another candidate, Mr Phillip Hall;
- (iii) the allegation that an inconclusive and unsatisfactory police investigation had been carried out into the activities of Mr Phillip Hall who, it was alleged, had sought and received funds from Aborigines by claiming he could ensure that ADC housing loans were offered to these people;
- (iv) the allegation that Mr Ron. Fennell, who claimed to be a consultant with the NAC, had sought housing contracts by suggesting he could arrange for ADC funds to be made available;
- (v) allegations that Mr Charles Perkins had improperly made available three airline tickets paid for by ADC funds; and
- (vi) the allegation that a senior officer of the ADC, Mr Mick O'Brien, had tampered with ADC files.

6. The Committee made further investigations into these matters. It is satisfied that the allegations against Messrs Nicholls and Hall have been raised with the Australian Federal Police (AFP) and subsequently referred to the Director of Public Prosecutions, and that these are the appropriate authorities to deal with such allegations.

7. With respect to the allegations about the Financial Advisory Consulting and Training Services, the Committee sought advice from the ADC and was informed that no advice had been sought or received from the Australian Government Solicitor about the setting up of the Service and thus the allegation that such advice was ignored is unfounded. The Committee was also advised that the \$148,000 lent by the ADC to the Service and a subsequent grant of \$10,000 have been properly accounted for and the Committee is satisfied with the assurances given by the ADC that the operations of the Service are being properly monitored.

8. The allegations about the activities of Mr Ron. Fennell were also raised by the Committee with the ADC. The Committee was advised that the ADC had sought the assistance of the Australian Government Solicitor to initiate legal proceedings against Mr Fennell. The Committee is satisfied with this action of the ADC and believes that, even though legal action is not proceeding at this stage, the ADC is the appropriate authority to keep this matter under review.

9. The allegations against Mr Perkins and Mr O'Brien differ from those outlined above in that they have not been drawn to the attention of any appropriate investigating authority. Counsel advised the Committee that if proven these allegations could indicate criminality and that the correct body to investigate these allegations was the AFP. Noting that Counsel had commented that the evidence supporting allegations against Mr Perkins was of poor quality and relied upon rumour and hearsay, and that no first hand evidence supported the allegation against Mr O'Brien, the Committee believed it should satisfy itself that these allegations were of substance before reporting on them to the House of Representatives. The Committee thus offered Mr Perkins and Mr O'Brien the opportunity to comment on the allegations.

10. It should be noted that the Committee was aware that one of the three allegations made about Mr Perkins was based on an incident which was said to have occurred before the ADC was established. In the course of Mr Perkins' appearance before the Committee it became obvious that another of the allegations was similarly based on an incident which occurred before the ADC was established despite a statement by a witness that it had occurred later.

11. Regarding the one incident which occurred during Mr Perkins' association with the ADC, he provided evidence in the form of movement requisitions which indicated that the travel expenditure was properly accounted for and acquitted.

12. The second allegation, that Mr Perkins provided an airline ticket purchased with ADC funds, was wrong in that the ADC did not exist at the time of the incident upon which the allegation was based. However, Mr Perkins then went on to explain the incident.

13. With regard to the third allegation, Mr Perkins indicated that the incident occurred some six years ago and his recollection of it was unclear although he very strongly believed that he had not done any wrong and that the allegation was untrue. The Committee, in considering Mr Perkins' response to this third allegation considered the evidence of the witness who had made this allegation. The Committee noted that this witness had made statements to the Committee about the incident and subsequently advised the Committee that in part the truth was actually the reverse of the original statement. It was also clear that some statements of the witnesses on other matters were not supported by other witnesses or borne out by objective records.

14. After considering the evidence of the witnesses who had made the allegations against Mr Perkins' categorical denial on oath of any wrongdoing and the documents he produced, the Committee accepts Mr Perkins' denial and sees no reason why these matters should be pursued further by any investigating authority.

15. As noted above it was alleged that Mr O'Brien had tampered with ADC files. It was implied that this action was taken because of the Committee's inquiry into the ADC at that time. A witness before the Committee noted that he had been told files dealing with Mr David Nicholl's loan and with a company called Boomerang Insurance were altered by Mr O'Brien. Mr O'Brien advised the Committee that the file on Boomerang Insurance was reported missing to the Administrator by the Commission's principal legal officer and subsequently to the Police eleven months before the Committee commenced its inquiry and that the theft of the file has been the subject of further investigation. The other file Mr O'Brien was alleged to have tampered with was that of Mr David Nicholls. As noted above, Mr Nicholls is under investigation by the Director of Public Prosecutions. The file in question is thus not available to the ADC, but in sworn evidence Mr O'Brien categorically denied any suggestion that he had tampered with these or any other files.

16. The Committee was of the view that the ADC's prompt action in reporting the absence of the stolen files and the fact that the other papers alleged to have been tampered with had been passed to the AFP and subsequently the Director of Public Prosecutions for investigation gave credence to Mr O'Brien's strong denials. The Committee accepts Mr O'Brien's denial and could thus see no reason for these matters to be pursued beyond the investigations already being carried out by competent authorities.

Conclusion

17. In conclusion the Committee believes that the aspects of its ADC inquiry reported upon above have illustrated a weakness in the mechanisms available to a parliamentary committee to investigate serious matters which may be drawn to its attention. A committee may feel obliged to look into allegations which are unproven but which, if examined in public would attract enormous media attention even though, at the end of the

examination, as in this case, the allegations may prove to be without foundation. To protect both witnesses and those against whom the allegations are made, committees have an obligation to take such evidence in camera. This provides certain protections for witnesses making the allegations above and beyond those normally provided by parliamentary privilege. However, it puts the accused at a significant disadvantage in that standing order 340 of the House of Representatives places substantial limitations upon the disclosure of the unpublished in camera evidence even to the accused. The standing orders thus prevent the accused from being informed not only of the identity of his accuser but also from being able to cross-examine that person, thus denying the accused of basic rights normally accorded under law.

18. The Committee is concerned about this matter as it could be said that, through this process, witnesses or accused are, in certain instances, being denied natural justice by the Parliament. The Committee understands that the Procedure Committee of the House of Representatives is currently considering the standing orders of the House. The Chairman and Secretary of the Expenditure Committee will be preparing a paper arising out of the Committee's experience in this inquiry to be brought to the attention of the Procedure Committee.

LEO MCLEAY, M.P.

Chairman

May 1985

INQUIRY INTO THE ABORIGINAL DEVELOPMENT COMMISSION

DISSENT TO THE FINAL REPORT

1. Those of us making this dissenting report recommend that there should be a comprehensive judicial inquiry into the Aboriginal Development Commission.

2. This course of action was supported by us from the time that the Committee, in its interim report, indicated that further investigation would take place of information and allegations of a serious nature which had come to the Committee's attention during its inquiry.

3. It is the view of those making this dissenting report that the role of the Expenditure Committee is not that of an auditor. It is to examine the efficiency and effectiveness of the use of funds made available for specified purposes by the Parliament. In our view it is not the function of the Committee to pursue every suggestion of maladministration in a comprehensive way but rather it is its function to satisfy itself as to the efficiency or otherwise of administrative procedures in the effective expenditure of taxpayers' funds.

4. In examining the efficiency and effectiveness of the ADC the Committee became aware of the possible commission of criminal offences, the occurrence of serious administrative malpractice and gross mismanagement. There were numerous occasions on which the evidence presented to the Committee indicated widespread management inefficiency and ineffective procedures.

5. Not only was it not the role of the Committee, it has neither the resources nor the expertise to pursue every issue of this nature which is brought to its attention. Nevertheless, examples were so widespread and maladministration so evident in those few examples which the Committee more fully explored that we have come to the conclusion that the ADC has been poorly administered, that there were breaches of the ADC's Act related to pecuniary interest and that some of the maladministration was of such seriousness as to indicate the possible commission of criminal offences. All these matters taken together have led us to the view that there should be a comprehensive judicial inquiry into the activities of the ADC. Because from our experience many funding trails crossed various jurisdictions we are of the view that the terms of reference of such an inquiry should allow it to examine all areas of Commonwealth funding in Aboriginal affairs.

6. Our recommendation that such a judicial inquiry be established is based on the Committee's examination of the evidence it collected and it has been reinforced by the views expressed by Mr John Coombs, Q.C. who was appointed to assist the Committee in evaluating the evidence before it. We agree with the view expressed by Mr Coombs that in the light of the Committee's limited powers and lack of criminal investigatory controls there are many questions which those with such powers and experience would have wished to have asked which were not asked. We do not believe that the Committee should have placed itself in the role of a criminal investigator, prosecutor or tribunal. It is not trained or equipped in any of these roles. Once any allegation of a criminal kind is made and supported by evidence which had to be taken seriously, the Committee in our view should in accordance with its procedures take steps to refer the evidence to an appropriate investigatory authority whether it as a Committee accepted the evidence or not.

7. Mr Coombs recommended that certain matters be brought to the attention of the Australian Federal Police. We are concerned that, despite this recommendation, the Committee has chosen to examine these matters further. It is our view that those who in their evidence made allegations and those against whom allegations were made can best be assured of receiving fair treatment if the allegations are investigated by bodies with appropriate experience in investigation rather than by the Committee attempting to weigh statements of witnesses as it has done.

8. An example of the Committee attempting to weigh the statements of witnesses is reported at paragraph 13 of the Committee's report. It is, in our view, an inappropriate activity for the Expenditure Committee. The Committee's report notes that one witness changed the evidence first given to the Committee. From this the Committee concluded that by so doing the reliability of this witness must be called into question. However, the report fails to explain that the revised evidence referred to the actions of the witness and that the revision did not in any way weaken or change the allegations made against Mr Perkins. This, when considered against the comments of Counsel that Mr Perkins was generally an evasive and unhelpful witness from whom Committee attempts to seek answers were probably a waste of time, is evidence that the Committee in pursuing an investigation of this allegation was venturing into a field beyond its expertise. The matter like the others Counsel suggested for investigation by the AFP should be taken up by that body as a matter of urgency. We believe that the fact that several matters recommended for further investigation by Counsel have recently been taken up by appropriate investigating authorities supports the case for investigation of other matters by suitable authorities rather than dismissal by the Committee after perfunctory examination.

9. Those making the dissent express their concern that such a judicial inquiry would be hampered in its activities if Mr Perkins did not stand aside from his present responsibility during the course of the investigation.

10. With respect to the conclusions of the main report we note the total inadequacy of the Parliamentary system to deal with the allegations made to the Committee. We strongly believe that these allegations should not be investigated further by the House but should immediately be taken up by appropriate investigating authorities. We note the Committee's concern at paragraph 17 for the protection of those against whom allegations have been made and would wish to add to this our concern that those making allegations within the forum of Committee inquiries should have available to them similar protections and that these protections should be strengthened. We are also concerned that the report of the Committee identifies certain people who either made allegations or against whom allegations were made. Having been so named we have had no alternative in giving examples of our concerns to do likewise.

11. Finally we note that throughout the inquiry, allegations have been discarded or not fully explored by the Committee. It has, in several instances been judged to be beyond the Committee's competence or resources to pursue the plethora of allegations brought to its attention and so only one or two of the allegations seen as representative of administrative difficulties or perhaps involving potential criminality have been selected for closer examination. The Committee's lack of experience in questioning and investigating such matters has meant that even those selected for closer examination have not, as noted by Counsel, been fully explored. The Committee has thus

dismissed or failed to fully examine many matters on the basis of scant information. We believe this strengthens the argument that the Committee had neither the time, expertise, nor responsibility to pursue the many allegations brought to its attention and that these are the proper concern of a properly constituted judicial inquiry.

Hon. I.B.C. Wilson, M.P.,

Deputy Chairman

for and on behalf of

J.H. Beale, M.P.

M.R. Cobb, M.P.

D.B. Cowan, M.P.

D.P. Hawker, M.P.

P.N. Slipper, M.P.

C.W. Tuckey, M.P.

MAY 1985

APPENDIX I

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON EXPENDITURE

INQUIRY INTO THE ABORIGINAL DEVELOPMENT COMMISSION

Terms of Reference

In February 1984 the House of Representatives Standing Committee on Expenditure agreed to conduct an inquiry into the Aboriginal Development Commission [ADC] with the following terms of reference:

- . to review the efficiency and effectiveness of expenditure by the Aboriginal Development Commission on programs of financial assistance to Aboriginals and Torres Strait Islanders with specific attention to -
 - (a) the procedures and criteria for the allocation of financial assistance to Aboriginals and Torres Strait Islanders;
 - (b) expenditure by the Commission on the administration of the ADC and the programs of financial assistance;
 - (c) the standard of accountability by the ADC in relation to its programs of expenditure; and
 - (d) criteria applied by the ADC in assessing proposed property acquisitions.
- . to review the need for a continuation of the special funding arrangements available through the ADC to Aboriginals and Torres Strait Islanders.

