



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN CONNECTION WITH THE ACTIVITIES OF LOBBYISTS AND OTHER PERSONS

**COMMENTS MADE BY
MR STANLEY JOHN HALDEN
TO A JOURNALIST ABOUT DISCLOSURES OF
CONFIDENTIAL CABINET INFORMATION**

18 March 2009

ISBN: 978 0 9805050 9 2

© 2009 Copyright in this work is held by the Corruption and Crime Commission. Division 3 of the Copyright Act 1968 (Commonwealth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example, study, research or criticism. Should you wish to make use of this material other than as permitted by the Copyright Act 1968, please write to the Corruption and Crime Commission at the postal address below.

This report and further information about the Corruption and Crime Commission can be found on the Commission Website at www.ccc.wa.gov.au.

Corruption and Crime Commission

Postal Address	PO Box 7667 Cloisters Square PERTH WA 6850
Telephone	(08) 9215 4888 1800 809 000 (Toll Free for callers outside the Perth metropolitan area.)
Facsimile	(08) 9215 4884
Email	info@ccc.wa.gov.au
Office Hours	8.30 a.m. to 5.00 p.m., Monday to Friday



CORRUPTION AND CRIME COMMISSION

Hon Nicholas Griffiths MLC
President of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Hon Grant Woodhams MLA
Speaker of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Commission presents the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: Comments Made by Mr Stanley John Halden to a Journalist About Disclosures of Confidential Cabinet Information.*

Yours faithfully

A handwritten signature in black ink that reads "Len Roberts-Smith".

The Hon L W Roberts-Smith RFD QC
COMMISSIONER

18 March 2009

ABBREVIATIONS AND ACRONYMS

“the Act”	<u><i>Corruption and Crime Commission Act 2003</i></u>
“Cable Sands”	Cable Sands (WA) Pty Ltd
“the Commission”	Corruption and Crime Commission
DPC	Department of the Premier and Cabinet
EPA	Environmental Protection Authority
“Halden Burns”	Halden Burns Pty Ltd
“the PSM Act”	<u><i>Public Sector Management Act 1994</i></u>
“the PSA”	<u><i>Public Service Act 1978</i></u>

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	v
EXECUTIVE SUMMARY	ix
Introduction	ix
Mr Stanley John Halden (“Mr John Halden”)	ix
Reaction by the Premier	x
Preliminary Investigation by the Commission	x
Assessment by the Commission	xii
Conclusion by the Commission	xiv
Commission Opinion as to Misconduct	xiv
Executive Summary: Endnotes	xv
CHAPTER ONE	
FOREWORD	1
1.1 Introduction	1
1.2 Jurisdiction of the Commission	1
1.3 Definitions	1
1.3.1 Public Officer	1
1.3.2 Misconduct	2
1.4 Reporting by the Commission	3
1.5 Opinions of Misconduct: Standard of Proof	4
CHAPTER TWO	
BACKGROUND	7
2.1 People and Entities Mentioned in this Report	7
2.1.1 Mr Stanley John Halden (“Mr John Halden”)	7
2.1.2 Halden Burns Pty Ltd	7
2.1.3 Mr Robert Taylor	7
2.1.4 Coral Coast Marina Development Pty Ltd	8
2.1.5 Cable Sands (WA) Pty Ltd	8
2.1.6 Gunson Resources Limited	8
2.1.7 Environmental Protection Authority	8
2.2 The Law Governing Confidentiality of Cabinet Information	8
2.2.1 <i>The Criminal Code</i>	8
2.2.1.1 Section 81: Disclosing Official Secrets	8
2.2.2 <i>Public Sector Management Act 1994</i> (“PSM Act”)	9
2.2.3 <i>Public Service Regulations 1988</i>	9
2.2.4 <i>Administrative Instruction 711</i>	10
2.2.5 <i>Premier’s Circular 2003/14: Cabinet Confidentiality</i>	10
2.3 Allegation	11
2.4 Scope and Purpose of the Preliminary Investigation	11

CHAPTER THREE	
EXAMINATION OF INVESTIGATIVE MATERIAL	13
3.1 Introduction	13
3.1.1 <i>The West Australian</i> Newspaper Article of 31 May 2008	13
3.1.2 Later Media Reports	14
3.2 Reports to the Commission	15
3.3 Investigative Steps Taken by the Commission	16
3.4 Interview: Mr Halden	16
3.4.1 Mauds Landing	16
3.4.2 Ludlow	17
3.4.3 Coburn	19
3.4.4 Mauds Landing, Ludlow and Coburn	19
3.5 Commission Inquiries	19
3.5.1 Three Government Decisions	20
3.5.1.1 Mauds Landing	20
3.5.1.2 Ludlow	20
3.5.1.3 Coburn	20
3.6 Private Examination of Mr Halden	21
3.6.1 Mauds Landing	23
3.6.2 Ludlow	27
3.6.3 Coburn	29
3.6.4 Private Examination: General Questions	30
3.7 Other Evidence Obtained by the Commission	31
3.8 Assessment by the Commission	31
3.9 Conclusion by the Commission	34
CHAPTER FOUR	
COMMISSION OPINION	35
4.1 Commission Opinion as to Misconduct	35
APPENDIX	37
Text of Article Entitled “Halden says lobbying is all about skills, not contacts”, <i>The West Australian</i> Newspaper, 31 May 2008, pp.6-7.	
ENDNOTES	43

EXECUTIVE SUMMARY

Introduction

[1] On 31 May 2008 an article by Mr Robert Taylor¹ appeared in the *The West Australian* newspaper entitled “Halden says lobbying is all about skills, not contacts” (refer Appendix to this report).

[2] The article was based on an interview Mr Taylor had conducted with Mr Stanley John Halden (“Mr John Halden”). Among other things, the article reported that:

Mr Halden concedes that he too has received Cabinet leaks but said they came from “indiscreet” public servants not ministers.

“People tell you what happened in Cabinet quite indiscreetly,” he said.

“You don’t have to ask. They’ll tell you, they’ll say what they wrote in a Cabinet briefing note. They’ll tell you ‘This is what Cabinet decided on yesterday’.”²

[3] These comments were reported to the Commission in accordance with section 28 of the *Corruption and Crime Commission Act 2003 Act* (“the Act”) by the then Director General of the Department of the Premier and Cabinet (DPC). The then Leader of the Opposition also reported Mr Halden’s comments to the Commission. The Commission undertook a preliminary investigation in accordance with section 32(2) of the Act and the information obtained is described in this report.

[4] In accordance with section 22 of the Act the purpose of the investigation was to assess the allegations and form an opinion as to the possible occurrence of “misconduct” by a public officer, as defined in section 4 of the Act.

Mr Stanley John Halden (“Mr John Halden”)

[5] Mr Halden was elected to the Legislative Council of the Parliament of Western Australia as Member for the North Metropolitan Province from 22 May 1986, and was elected for the South Metropolitan Region from 22 May 1989, being re-elected in 1993 and 1996 (for the term commencing 22 May 1997). Mr Halden resigned as a Member of the Legislative Council on 20 January 2000. Subsequent to this and until April 2001 Mr Halden was the Western Australian State Secretary of the Australian Labor Party. Mr Halden then worked for a public relations company for a year before setting up Halden Burns Pty Ltd (“Halden Burns”).

[6] Halden Burns is a communications and public relations company established in early 2002 and owned by Mr Halden and Ms Anne Louise Burns, a former political journalist with *The West Australian* newspaper.

Reaction by the Premier

- [7] The comments attributed to Mr Halden in the 31 May 2008 newspaper article caused the then Premier, the Hon Alan Carpenter MLA, to order the removal of Mr Halden from the position of Campaign Manager for Ms Karen Brown, Labor Candidate in the next State election for the Mount Lawley Electorate, and a former journalist and employee of Halden Burns. On 3 June 2008 Mr Carpenter was quoted in the media as saying: "I've asked the Labor Party, the State Secretary of the Labor Party, Bill Johnston, to ensure that John Halden is not managing Karen Brown's campaign".³

Preliminary Investigation by the Commission

- [8] The Commission conducted an assessment and decided, on 4 June 2008, to conduct a preliminary investigation in terms of section 32(2) of the Act to enable it to form an opinion in terms of section 22 of the Act as to whether misconduct by any public officer may have occurred.
- [9] In the course of its preliminary investigation the Commission took the following steps.
- Mr Halden was interviewed on 9 June 2008.
 - Call Charge Records (CCRs) were obtained for Mr Halden's telephones for relevant periods, and the subscribers of numbers frequently called were identified. The Commission experienced some difficulties in first obtaining, and then analysing, CCR details. That process, therefore, took some time.
 - Records were obtained under section 95 of the Act from DPC, the Environmental Protection Authority (EPA) and Halden Burns.
 - A private examination of Mr Halden was conducted on 11 September 2008.
- [10] At interview on 9 June 2008 Mr Halden was asked about the specific instances he was referring to when he told Mr Taylor he had been given information by public servants about what had happened in Cabinet "indiscreetly".
- [11] Mr Halden said that from his memory there were three instances that he was thinking of at the time he spoke with Mr Taylor, although only two of them involved Cabinet information. These related to developments located at Mauds Landing, Ludlow and Coburn.
- [12] Coral Coast Marina Development Pty Ltd, a consortium, proposed to develop a Coral Coast Resort, which included tourist, residential and incidental commercial facilities centred around an inland marina, at Mauds Landing. Mauds Landing is located in the southern portion of the Ningaloo Marine Park, approximately three kilometres north of the Coral Bay settlement.⁴ The

proposed development was rejected by the Government with the then Premier of Western Australia, the Hon Dr Geoff Gallop MLA, releasing a Ministerial Media Statement to this effect on 4 July 2003.⁵

[13] Cable Sands (WA) Pty Ltd proposed to develop a mineral sands mine at Ludlow, an area adjacent to the Tuart Forest National Park near Busselton. The Government decision to approve mining, subject to improved environmental outcomes, was announced by the then Minister for the Environment, the Hon Dr Judy Edwards MLA, on 23 September 2003.⁶

[14] Gunson Resources Limited, a Perth-based Australian mineral exploration company, proposed to develop a mineral sands mine at Coburn, 84 kilometres south-east of Denham in the Shire of Shark Bay, Western Australia. The Government decision to permit mining was made by the then Minister for the Environment, the Hon Mark McGowan MLA, on 22 May 2006.⁷

[15] In relation to all three of the issues Mr Halden was asked at interview whether he had received the information before it was publicly known. Mr Halden said that in each case it was before the decision was publicly known but not long before, and when asked how long before Mr Halden replied: "in every instance less than a week". Mr Halden was also asked if he had received similar information in relation to other matters and his response was "No".⁸

[16] During a private examination on 11 September 2008 Mr Halden was shown a letter which he had written to a Director of Coral Coast Marina Development Pty Ltd on 11 November 2003. The letter set out Mr Halden's "... recollection of events during the period 2nd to 4th July, pertaining to the Premier's decision to not grant an approval for the Maud's Landing project to proceed".⁹

[17] The letter provided a timeline of events. It included the following:

- *On the 3rd of July I rang the Premier's Department and the Minister for State Development's Office seeking confirmation that the ABC report was correct. I was advised that by both offices that they did not know whether the Premier had made a decision on the project.*
- *Late on the evening of 3rd July I was informed that the Premier would be flying to Coral Bay the next day and announcing that the project would not be proceeding.*
- *On July 4th the Premier flew to Coral Bay and made the announcement that the project would not go ahead.*

[18] The following exchange occurred between Counsel Assisting and Mr Halden during the private examination.

You have said there in that letter that you were advised by both officers that they did not know whether the Premier had made a decision on the project? - - Yes.

That doesn't seem to be consistent with what you have said today. How do you explain the difference? - - -The difference is only that that was my recollection when I was talking to Peter Kennedy - sorry, to Robert Taylor and this is the letter that I wrote then, which is probably correct, by the way, but my memory of these events is my memory as I said to Taylor and said here.

So you are accepting what's written in the letter closer to the time is probably - - -?- - -Yes.

- - - the accurate account? - - -Yes.

And the accurate account is then that you were told nothing about what the decision was going to be at that time. Is that right? - - -At that time, yes.¹⁰

Assessment by the Commission

[19] On the information available to the Commission the situation appears to be as detailed below.

- Mr Halden told Mr Taylor, a senior journalist, that he had been provided with Cabinet information “indiscreetly” by public servants.
- When questioned by the Commission Mr Halden identified three instances which he said were in his mind when he made that comment to Mr Taylor. These related to Government decisions about a proposed tourist development at Mauds Landing, and proposals for mineral sands mining at Ludlow and Coburn.
- In each case Mr Halden said that he had received the information after phoning the reception area of the department in question, either DPC (or the Premier’s Office) or the EPA. He was then put through to “someone” who gave him information.
- In each case the information which Mr Halden said was supplied to him appeared to be only about the process which was being followed by the Government in making and announcing the decision.
- Mr Halden said that he was not able to identify the officers he spoke to in those departments.
- Additional information obtained by the Commission has not assisted in identifying those officers.
- In relation to Mauds Landing the relevant decision was made by the then Premier. In relation to Ludlow and Coburn the decisions were made by the then Ministers for the Environment. It does not appear that there was a Cabinet decision in any of the cases.

- In none of the cases was Mr Halden able to identify “Cabinet information” which had been supplied to him. Mr Halden said that when he referred to being told “what happened in Cabinet” he included being told something that enabled him to infer that it would not be going to Cabinet.
- Mr Halden said that he felt that in each case he had been told too much by the public servants in question.

[20] The Commission notes that Mr Halden said, at a private examination by the Commission on 11 September 2008, that he accepted that what he wrote in the letter dated 11 November 2003 was “the accurate account”.¹¹

[21] In the Commission’s view, the information in the letter differs significantly from the evidence of Mr Halden to the Commission at the private examination (before the letter was put to him).

[22] The Commission considers that this difference between Mr Halden’s evidence to the Commission and what he said in his letter is significant. On one hand he has said that he was provided with information by a public servant several days before its public announcement and, on the other hand, in his letter he said that he had been unsuccessful in obtaining the same information from the Government the day before the announcement, and was only told (by an unidentified source) about the decision “late on the evening” before the announcement.

[23] The Commission considers that the difference between Mr Halden’s accounts of this event casts doubt on the accuracy of his evidence and his assertions to the media.

[24] On a consideration of Mr Halden’s evidence as a whole, in the circumstances otherwise shown, together with the difference between his evidence and the account he gave in his letter dated 11 November 2003, the Commission is unable to conclude his allegation of misconduct by one or more unnamed public officers (as implied in his evidence and statements to the media), has any reasonable substance.

[25] The Commission has no independent evidence which establishes that Mr Halden spoke to any public officer about any of the matters he has identified, although it accepts that Mr Halden’s clients would have been concerned to know what the impending Government decision was in each case, and it is therefore likely that Mr Halden would have made some efforts to find out.

[26] Even assuming that Mr Halden’s account was accurate, and he did speak to public servants who provided him with the information he said they did, there is no reasonable basis upon which it might be concluded any public officer involved may have engaged in misconduct. In each case Mr Halden was acting on behalf of a company making a proposal to Government and, on his account, seems to have been provided with fairly straightforward information about the process being followed by the Government shortly before a decision

was publicly announced. Even if it was accepted that the information went beyond what should have been provided to Mr Halden, there is no evidence that the information was confidential information which it would have been a breach of duty to disclose to him in the circumstances, nor that the public officers providing the information had any purpose other than to be helpful. There is no evidence available to the Commission which, in the Commission's view, suggests that any public officer acted from an improper motive or with a corrupt intention.

[27] Accordingly, even accepting Mr Halden's account of what he was told, the information allegedly supplied to him by public officers would not, in the Commission's opinion, be capable of constituting misconduct in terms of section 4 of the Act.

Conclusion by the Commission

[28] On the basis of the information before the Commission it has made the following assessment.

- Neither the information supplied to the Commission, nor any other information obtained by the Commission, is capable of causing the Commission to form an opinion that any public officer has engaged in misconduct in respect of this matter.
- Other information available to the Commission casts doubt on the accuracy of Mr Halden's account about what information he was provided, and when.
- The Commission considers it unlikely that further inquiries into this matter would be likely to enable it to form an opinion that any public officer had engaged in misconduct, and does not consider any further investigation to be justified.

Commission Opinion as to Misconduct

[29] On the information currently available to the Commission there are insufficient grounds for it to form an opinion that any public officer has, or may have, engaged in misconduct by providing confidential information about Cabinet deliberations and decisions (or at all) to Mr John Halden.

EXECUTIVE SUMMARY: ENDNOTES

¹ Mr Robert Taylor is a senior journalist and the State Political Editor for *The West Australian* newspaper.

² *The West Australian* newspaper, 31 May 2008, pp.6-7.

³ ABC News Website, www.abc.net.au/news, 3 June 2008.

⁴ Environmental Protection Authority Website, <http://www.epa.wa.gov.au/search.asp> , viewed 3 February 2009.

⁵ Government of Western Australia, Government Media Office, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=122496&search=gallop+ningaloo&admin=&minister=&portfolio=®ion=>, viewed 3 February 2009.

⁶ Government of Western Australia, Government Media Office, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/GallopLaborGovernmentSearch.aspx?ItemId=117652&minister=Edwards&admin=Gallop&page=3>, viewed 4 February 2009.

⁷ Statement (by the Hon Mark McGowan MLA, Minister for the Environment) that a Proposal May Be Implemented (Pursuant to the Provisions of the *Environmental Protection Act 1986*), Statement No. 000725, published on 22 May 2006.

⁸ Record of Interview of Mr Stanley John Halden at the Corruption and Crime Commission, 9 June 2008, pp.12-13.

⁹ Letter to Mr Alan Smith, Director, Coral Coast Marina Development Pty Ltd, of 11 November 2003 from Mr John Halden [E 17730].

¹⁰ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, p.68.

¹¹ *Ibid.*

CHAPTER ONE

FOREWORD

1.1 Introduction

- [1] On 31 May 2008 an article by Mr Robert Taylor¹ appeared in the *The West Australian* newspaper entitled “Halden says lobbying is all about skills, not contacts” (refer Appendix to this report).
- [2] In that article Mr Stanley John Halden (“Mr John Halden”) was quoted as saying he had “indiscreetly” been given information by public servants about what had happened in Cabinet.²
- [3] These comments were reported to the Commission in accordance with section 28 of the Corruption and Crime Commission Act 2003 Act (“the Act”) by the then Director General of the Department of the Premier and Cabinet. The then Leader of the Opposition also reported Mr Halden’s comments to the Commission. The Commission undertook a preliminary investigation in accordance with section 32(2) of the Act and the information obtained is described in this report.
- [4] In accordance with section 22 of the Act the purpose of the investigation was to assess the allegations and form an opinion as to the possible occurrence of “misconduct” by a public officer, as defined in section 4 of the Act.

1.2 Jurisdiction of the Commission

- [5] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the Act.
- [6] It is a function of the Commission, pursuant to section 18 of the Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the procedures set out in the Act.

1.3 Definitions

1.3.1 Public Officer

- [7] The term “public officer” is defined in section 3 of the Act by reference to the definition in section 1 of The Criminal Code. The term “public officer” includes

any of the following: police officers; Ministers of the Crown; members of either House of Parliament; members, officers or employees of any authority, board, corporation, commission, local government or council of a local government; and public service officers and employees within the meaning of the Public Sector Management Act 1994 (“the PSM Act”).

[8] Mr Halden was not a public officer during the period relevant to this report.

1.3.2 Misconduct

[9] The term “misconduct” has a particular and specific meaning in the Act and it is that meaning which the Commission must apply. Section 4 of the Act states that:

Misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) *a public officer engages in conduct that —*
 - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
 - (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
 - (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute —

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

1.4 Reporting by the Commission

[10] Under section 84(1) of the Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:

- (a) *statements as to any of the Commission’s assessments, opinions and recommendations; and*
- (b) *statements as to any of the Commission’s reasons for the assessments, opinions and recommendations.*

[11] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4).

[12] Section 86 of the Act requires that, before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters. Accordingly, on 10 February 2009 the Commission wrote to Mr Halden drawing his attention to matters which it was proposed to include in its report and which he might consider were adverse to him. That was done by enclosing a copy of the draft Executive Summary. He was extended the opportunity to make representations in relation to those matters, by 24 February 2009.

[13] Mr Halden’s lawyers, DLA Phillips Fox, provided representations on his behalf by way of letter dated 25 February 2009. They concluded with the comment that –

Our client has not been provided with any portion of the balance of the Commission’s report in this matter. If it contains similar allegations or statements then we are instructed to request that they also be removed from the report. If there is any doubt as to whether

material in the Commission's report contains criticisms of Mr Halden then we are instructed to request that you provide him with a copy of the draft report before it is released and provide him with an adequate period of time in which to respond prior to its publication.

- [14] Notwithstanding that the Commission considered its notification of 10 February 2009 was proper and appropriate notification under section 86 of the Act, it wrote to Mr Halden's lawyers on 26 February 2009:

There is no requirement, and nor is it the practice of the Commission, to provide a copy of its draft reports to persons in respect of whom they may contain adverse matters. What is required, is that the person concerned has been put on notice of the particular issue and been given a reasonable opportunity to make representations to the Commission concerning it (see "Cox v Corruption and Crime Commission" [2008] WASCA 199, per Martin CJ at [52]-[54] and Steytler P at [128]-[131].

It has been patently apparent throughout this preliminary investigation that the central question was whether or not there was substance to Mr Halden's claims and whether or not they were credible.

Be all that as it may, given the limited ambit of this matter, as a preliminary investigation, the Commission is prepared to provide the additional material listed in the Supplementary Schedule forwarded herewith.

The Commission did provide that additional material and allowed a further opportunity to respond to that by 6 March 2009.

- [15] By letter dated 6 March 2009 DLA Phillips Fox wrote that there were "a number of adverse inferences and comments made against Mr Halden in the Draft Report" but noted that:

These are the same adverse inferences and comments which were outlined in the Executive Summary, although the language differs.

They added that they did not intend to refer (again) to each of them, but repeated what they had written earlier.

- [16] The Commission has had regard to all the representations made on Mr Halden's behalf and has accommodated them in this report insofar as it considers necessary or appropriate.

1.5 Opinions of Misconduct: Standard of Proof

- [17] The Commission fully appreciates that any expression of opinion by it in a published report, that a public officer has engaged in misconduct, is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation.

[18] The Commission is careful to bear these matters in mind, when forming opinions, when conducting inquiries and when publishing the results of its investigations.

[19] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.

[20] The balance of probabilities is defined as:

The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability ...³

[21] The balance of probabilities is a standard used by courts when considering civil matters. It is a standard which is less than the criminal standard of beyond reasonable doubt. This was confirmed by the High Court in a unanimous judgement in *Rejtek v McElroy* (1965) 112 CLR 517:

... The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...

[22] The balance of probabilities can be applied to circumstantial evidence, as explained by the High Court in *Luxton v Vines* (1952) 85 CLR 352:

... The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture ... But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusions sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise ...

[23] The degree of evidence necessary to reach a conclusion on the balance of probabilities varies according to the seriousness of the issues involved. This was explained by Sir Owen Dixon in *Briginshaw v Briginshaw* (1938) 60 CLR 336:

... Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences ...

- [24] Or, as Lord Denning said in *Hornal v Neuberger Products Ltd* (1956) 3 All ER 970: "The more serious the allegation the higher the degree of probability that is required ...".
- [25] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a "mere mechanical comparison of probabilities", without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact to at least that degree.⁴
- [26] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the preliminary investigation. Any expression of opinion in this report is so founded.

CHAPTER TWO BACKGROUND

2.1 People and Entities Mentioned in this Report

2.1.1 Mr Stanley John HALDEN (“Mr John Halden”)

- [27] Mr Halden was elected to the Legislative Council of the Parliament of Western Australia as Member for the North Metropolitan Province from 22 May 1986, and was elected for the South Metropolitan Region from 22 May 1989, being re-elected in 1993 and 1996 (for the term commencing 22 May 1997). Mr Halden resigned as a Member of the Legislative Council on 20 January 2000. Subsequent to this and until April 2001 Mr Halden was the Western Australian State Secretary of the Australian Labor Party. Mr Halden then worked for a public relations company for a year before setting up Halden Burns Pty Ltd (“Halden Burns”).

2.1.2 Halden Burns Pty Ltd

- [28] Halden Burns is a communications and public relations company established in early 2002 and owned by Mr Halden and Ms Anne Louise Burns, a former political journalist with *The West Australian* newspaper. Mr Halden provided the following response at a private examination on 11 September 2009 when asked by Counsel Assisting to provide a brief summary of the work conducted by Halden Burns.

Basically Halden Burns - and I guess it's evolved a bit over time but is a company that tries to provide to other companies a one-stop communication service. So we will do as much in regards to our company's communication with the outside world as they want us to perform and that can be anything from writing their tenders, their annual report, their appeals to the EPA [Environmental Protection Authority] to organising their media, their press, doing public relations, doing community consultation and obviously the last bit but in terms of the work component bit, our business is not a lobbying company where lobbying is the major component. Lobbying is probably five to 10 per cent ...

... if you just look at the background of the people who work in Halden Burns there's actually one former politician and the rest, with the exception of our support person, are all journalists. So our business is about writing and communicating ...⁵

- [29] Details of staff and clients of Halden Burns are listed on the Western Australian Government Lobbyists Register and the Australian Government Lobbyists Register.

2.1.3 Mr Robert Taylor

- [30] Mr Robert Taylor is a senior journalist and the State Political Editor for *The West Australian* newspaper.

2.1.4 Coral Coast Marina Development Pty Ltd

- [31] Coral Coast Marina Development Pty Ltd, a consortium, proposed to develop a Coral Coast Resort, which included tourist, residential and incidental commercial facilities centred around an inland marina, at Mauds Landing. Mauds Landing is located in the southern portion of the Ningaloo Marine Park, approximately three kilometres north of the Coral Bay settlement.⁶ The proposed development was rejected by the Government with the then Premier of Western Australia, the Hon Dr Geoff Gallop MLA, releasing a Media Statement to this effect on 4 July 2003.⁷

2.1.5 Cable Sands (WA) Pty Ltd

- [32] Cable Sands (WA) Pty Ltd (“Cable Sands”) is a mineral sands exploration and mining company, which is part of Bemax Resources Limited.⁸ One of its projects is the Mineral Sands Mine Lease at Ludlow, an area adjacent to the Tuart Forest National Park near Busselton.

2.1.6 Gunson Resources Limited

- [33] Gunson Resources Limited is a Perth-based Australian mineral exploration company, currently developing the Coburn Mineral Sand Project, 84 kilometres south-east of Denham in the Shire of Shark Bay, Western Australia. The Project involves the excavation and processing of a major low-grade heavy mineral sands deposit over 12 years, which is transported by truck to the Port of Geraldton, 250 kilometres south, for direct export.⁹

2.1.7 Environmental Protection Authority

- [34] The Environmental Protection Authority [EPA] was established by the Parliament of Western Australia as an independent Authority with the broad objective of protecting the State’s environment. This is undertaken through the process of providing overarching environmental advice to the Minister for the Environment through the preparation of environmental protection policies and the assessment of development proposals and management plans, as well as providing public statements about matters of environmental importance. The EPA has five members: a full-time Chairman; a part-time Deputy Chairman; and three part-time members.¹⁰ The EPA receives support from the Department of Environment and Conservation, through the EPA Service Unit, to carry out its functions.¹¹

2.2 The Law Governing Confidentiality of Cabinet Information

2.2.1 *The Criminal Code*

2.2.1.1 Section 81: Disclosing Official Secrets

- [35] Section 81(2) of *The Criminal Code* states:

A person who, without lawful authority, makes an unauthorised disclosure is guilty of a crime ...

[36] “Unauthorised disclosure” includes “the disclosure by a person who is a public servant or government contractor of official information in circumstances where the person is under a duty not to make the disclosure”.

[37] “Official information” means “information, whether in a record or not, that comes to the knowledge of, or into the possession of, a person because the person is a public servant or government contractor”.

2.2.2 Public Sector Management Act 1994 (“PSM Act”)

[38] Section 9 of the PSM Act, relating to general principles of official conduct, states:

The principles of conduct that are to be observed by all public sector bodies and employees are that they –

- (a) are to comply with the provisions of –*
 - (i) this Act and any other Act governing their conduct;*
 - (ii) public sector standards and codes of ethics; and*
 - (iii) any code of conduct applicable to the public sector body or employee concerned;*
- (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*
- (c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.*

[39] A contravention by a public servant of these principles constitutes a breach of discipline in terms of section 80 of the PSM Act. The penalties for a breach of discipline include: reprimand; transfer; imposition of a fine; reduction in monetary remuneration; reduction in level of classification; or dismissal.

2.2.3 Public Service Regulations 1988

[40] *Regulation 8 of the Public Service Regulations 1988*,¹² relating to public comment, states:

An officer shall not –

- (a) *publicly comment, either orally or in writing, on any administrative action, or upon the administration of any Department or organization; or*
- (b) *use for any purpose, other than for the discharge of official duties as an officer, information gained by or conveyed to that officer through employment in the Public Service.*

2.2.4 Administrative Instruction 711

[41] *Administrative Instruction 711*¹³ applies to officers of the Public Service and states:

An officer shall not, except in the course of the officer's official duty and with the express permission of the chief executive officer,

1. (a) *give to any person any information relating to the business of the Public Service or other Crown business that has been furnished to the officer or obtained by the officer in the course of his/her official duty as an officer; or*
- (b) *disclose the contents of any official papers or documents that have been supplied to the officer or seen by the officer in the course of his/her official duty as an officer or otherwise ...*

[42] *Regulation 8 and Administrative Instruction 711* detailed above were criticised by the WA Inc Royal Commission and the subsequent Commission on Government. In Report II of the WA Inc Royal Commission, and Report No. 1 of the Commission on Government it was stated that: "Insofar as the individual public servant is concerned, they simply cast a blanket over all information concerning the conduct of government or which has been acquired in office as a public servant".¹⁴

2.2.5 Premier's Circular 2003/14: Cabinet Confidentiality

[43] *Premier's Circular 2003/14: Cabinet Confidentiality* was issued on 9 September 2003 and states:

Public Sector officers who receive copies of Cabinet documents, including Cabinet submissions and decision sheets, or who are otherwise made aware of information contained in such documents, are required to observe the confidentiality of that information. Cabinet documents and the information contained in them must not be revealed except for such purposes as are authorised by the relevant Minister and chief executive officer.

2.3 Allegation

- [44] That public officers improperly provided confidential information about Cabinet deliberations and decisions to Mr Halden.¹⁵

2.4 Scope and Purpose of the Preliminary Investigation

- [45] The general scope and purpose of the Commission's preliminary investigation was to enable the Commission to make an assessment and form an opinion as to whether any public officer had or may have engaged in misconduct by providing confidential information to Mr Halden.

CHAPTER THREE

EXAMINATION OF INVESTIGATIVE MATERIAL

3.1 Introduction

3.1.1 *The West Australian* Newspaper Article of 31 May 2008

[46] On 31 May 2008 an article was published in *The West Australian* newspaper entitled “Halden says lobbying is all about skills, not contacts” (refer Appendix to this report).

The article was written by Mr Robert Taylor, a senior journalist and the State Political Editor for *The West Australian* newspaper, and was based on an interview Mr Taylor had conducted with Mr Halden. Among other things, the article reported that:

Mr Halden concedes that he too has received Cabinet leaks but said they came from "indiscreet" public servants not ministers.

"People tell you what happened in Cabinet quite indiscreetly," he said.

"You don't have to ask. They'll tell you, they'll say what they wrote in a Cabinet briefing note. They'll tell you 'This is what Cabinet decided on yesterday'."¹⁶

[47] The recording of Mr Taylor’s interview with Mr Halden was placed on *The West Australian* Website. In it Mr Taylor asked Mr Halden whether he had received Cabinet leaks and he said “yeah, I have, but they’ve never come from Cabinet Ministers”.

[48] Mr Taylor asked: “Where do they come from, flies on the wall?”. Mr Halden said:

Well, public servants, who write them, you know, various people know what's happening and people tell you what happens in Cabinet quite indiscreetly. You don't have to ask, they'll tell you. They'll say what they wrote in the Cabinet briefing note. This is, you know, they'll say things like this is what Cabinet did – they'll tell you, this is what Cabinet decided on ...¹⁷

[49] In the context of the interview as a whole, Mr Halden appeared to be keen to demonstrate that in his role as a lobbyist he did not use his political connections to obtain special access or information from politicians, and that when public servants provided him with information it was as a representative of a company which was an interested party. In this regard, later in the interview, Mr Taylor asked:

But it's not the, it's not an authorised disclosure to you by Cabinet is it? It's still coming via circuitous means, from public servants who you have been dealing with who will tell you what the result of something is?

Mr Halden replied:

Well, well some will and as I say, sometimes it quite surprises me what they'll tell you and even, and, and not on the basis of being asked, but, but they see that also, I think in the same way I'm describing it. That is there's an interest by the company involved and that, they see that, in, in effect, I'm working for them.

3.1.2 Later Media Reports

- [50] The comments attributed to Mr Halden in the initial 31 May 2008 newspaper article caused the then Premier, the Hon Alan Carpenter MLA, to order the removal of Mr Halden from the position of Campaign Manager for Ms Karen Brown, Labor Candidate in the next State election for the Mount Lawley Electorate. Ms Brown is a former journalist and employee of Halden Burns, a company jointly owned by Mr Halden and Ms Burns (refer paragraph [28] of this report). On 3 June 2008 Mr Carpenter was quoted in the media as saying: "I've asked the Labor Party, the State Secretary of the Labor Party, Bill Johnston, to ensure that John Halden is not managing Karen Brown's campaign".¹⁸
- [51] Three other lobbyists who were managing the campaigns of other candidates were also removed from those positions. Mr Carpenter was later quoted as saying: "I came to the view that there was an issue here about possible perceptions, or realities, of conflict of interest ... (and) it was inappropriate for lobbyists to manage campaigns".¹⁹
- [52] Mr Halden attempted to explain his comments. He was quoted, in the same article, as saying that his comments had been taken out of context.

He said the information he received related to cabinet decisions after the fact.

"I have never claimed to be the recipient of sensitive cabinet information to the commercial advantage of my clients or myself".²⁰

- [53] Mr Halden was also quoted as saying:

"The only examples of me ever being made aware of cabinet information over a seven-year career was the inadvertent or indiscreet comments of some public servants regarding cabinet decisions".²¹

3.2 Reports to the Commission

[54] On 3 June 2008 the Commission was notified of Mr Halden's comments by the then Director General of the Department of the Premier and Cabinet (DPC), Mr Malcolm Wauchope, in accordance with section 28 of the Act. On the same date the then Leader of the Opposition, Mr Troy Buswell, also reported Mr Halden's comments to the Commission in accordance with section 25 of the Act.

[55] Mr Wauchope provided the Commission with a copy of *The West Australian* article of 31 May 2008 and referred specifically to the section which quoted Mr Halden's comments about public servants providing information to him (refer paragraph [46] of this report).

[56] Mr Wauchope also provided the Commission with a copy of *Premier's Circular 2003/14: Cabinet Confidentiality*, issued on 9 September 2003, and quoted the policy detailed in the Circular which states:

Public Sector officers who receive copies of Cabinet documents, including Cabinet submissions and decision sheets, or who are otherwise made aware of information contained in such documents, are required to observe the confidentiality of that information. Cabinet documents and the information contained within them must not be revealed except for such purposes as are authorised by the relevant Minister and chief executive officer.

[57] Mr Wauchope also pointed out that Section 9(b) of the PSM Act requires that public sector employees are to be scrupulous with the use of official information.

[58] Mr Wauchope also stated in his letter to the Commission of 3 June 2008 that the DPC *Code of Conduct* restricted the disclosure of information, requiring officers not to disclose classified information nor use information for any purpose other than the purpose for which it was retained, and indicated that it was likely that the codes of other agencies would contain similar statements.

[59] Mr Buswell also quoted from Mr Taylor's article of 31 May 2008, and included reference to an additional comment attributed to Mr Halden.

Cabinet is not about necessarily exposing confidential information of a party to the world. The investment decisions of BHP, for example, don't need to be known in the world but the government decision will significantly impact on that ... so BHP should know.

[60] Mr Buswell said that based on the statements quoted he had "concerns that confidential information important to the State is being passed on to parties outside the proper process", and "that the confidential Cabinet information he [Mr Halden] has received in the past may have been passed on to commercial organisations he represents as a lobbyist".

3.3 Investigative Steps Taken by the Commission

[61] The Commission conducted an assessment and decided, on 4 June 2008, to conduct a preliminary investigation in terms of section 32(2) of the Act to enable it to form an opinion in terms of section 22 of the Act as to whether misconduct by any public officer may have occurred.

[62] In the course of its preliminary investigation the Commission took the following steps.

- Mr Halden was interviewed on 9 June 2008.
- Call Charge Records (CCRs) were obtained for Mr Halden's telephones for relevant periods, and the subscribers of numbers frequently called were identified. The Commission experienced some difficulties in first obtaining, and then analysing, CCR details. That process, therefore, took some time.
- Records were obtained under section 95 of the Act from DPC, the EPA and Halden Burns.
- A private examination of Mr Halden was conducted on 11 September 2008.

3.4 Interview: Mr Halden

[63] At interview on 9 June 2008 Mr Halden was asked about the specific instances he was referring to when he told Mr Taylor he had been given information by public servants about what had happened in Cabinet "indiscreetly".

[64] Mr Halden said that from his memory there were three instances that he was thinking of at the time he spoke with Mr Taylor, although only two of them involved Cabinet information. These related to developments located at Mauds Landing, Ludlow and Coburn.

3.4.1 Mauds Landing

[65] Coral Coast Marina Development Pty Ltd, a consortium, proposed to develop a Coral Coast Resort, which included tourist, residential and incidental commercial facilities centred around an inland marina, at Mauds Landing. Mauds Landing is located in the southern portion of the Ningaloo Marine Park, approximately three kilometres north of the Coral Bay settlement.²² The proposed development was rejected by the Government with the then Premier of Western Australia, the Hon Dr Geoff Gallop MLA, releasing a Ministerial Media Statement to this effect on 4 July 2003.

The State Government has rejected plans for a resort-style marina development on the Ningaloo Reef coast at Mauds Landing.

Premier Geoff Gallop made the announcement during a visit to Coral Bay this morning.

Dr Gallop said Ningaloo's unique and world-class attractions would be put at risk by a project the size and scale of that proposed by Coral Coast Marina Development Pty Ltd.

He described the 280km coral reef as an environmental icon of State, national and international significance and pledged to fast-track a push for it to be granted World Heritage status.

...

Dr Gallop said the Environmental Protection Authority chairman had recommended earlier this year that the project not be approved ...²³

[66] Mr Halden said, at interview, that he had been acting for a company called Mauds Landing Pty Ltd [Sic: actually Coral Coast Marina Development Pty Ltd]. Mr Halden said that the Government decision on the development

had been through two environmental processes um the first had been approved and then the Minister had subsequently you know, reversed the decision of the EPA. The second process was underway ... the EPA sort of made a report that sort of sat somewhere in the middle ...²⁴

and the company was keen to find out what it meant.

Mr Halden also said:

We very quickly found out once we had tested the water, that in fact the Government, the Premier was going to come out and you know, deny the approval ... not deny the approval but not allow the process to continue; um and again it was just a question of ring up, you know, what's going on and I was advised of the decision.²⁵

[67] Mr Halden made the point that "all I was looking for on behalf of my clients in all of this was, had it been considered and when were we going to know".²⁶

[68] Mr Halden was asked who he had dealt with in relation to the matter and he replied: "No, no again it was just purely, it was purely, it was purely an enquiry to find out, you know timing and when we were going to be advised".²⁷

[69] Mr Halden was asked which department he had contacted and he replied: "Premiers". Mr Halden said he was "... told it had been denied ... or not supported or whatever it was".²⁸

3.4.2 Ludlow

[70] This related to a proposal by Cable Sands (refer paragraph [32] of this report) to develop a mineral sands mine at Ludlow, an area adjacent to the Tuart

Forest National Park near Busselton. The Government decision to approve mining, subject to improved environmental outcomes, was announced by the then Minister for the Environment, the Hon Dr Judy Edwards MLA, on 23 September 2003.²⁹

Environment Minister Judy Edwards has required improved environmental outcomes conditional to the approval of a Cable Sands mine at Ludlow.

Cable Sands proposed to mine 141ha of a 214ha mining lease in State forest adjacent to the Tuart Forest National Park, about 35km south of Bunbury. Although the area contains pine trees, it also contains remnant and regrowth tuarts.

...

These new conditions will double the number of old tuarts (100 years plus) retained and will increase by more than 50 per cent the number of mature trees (80-100 years) that will be retained compared to the Cable Sands proposal.

...

In May the Environmental Protection Authority recommended that the Cable Sands mining proposal be granted environmental approval subject to conditions, noting that in light of the rehabilitation and conservation offsets proposed by Cable Sands the long-term impact of the mine would be a neutral to positive outcome for tuart conservation.

The Minister's decision follows 37 appeals received about the EPA recommendation. After considering the appeals, Dr Edwards approved the Cable Sands proposal subject to her new conditions that significantly improve the environmental outcomes.

[71] On 6 August 2004 Dr Edwards announced that:

Cable Sands has met its final two environmental obligations outlined in ministerial conditions set down by the State Government after its mining approval was given last year.

...

Final mining act approvals are now with the Department of Industry and Resources.³⁰

[72] Mr Halden said, at interview, that he was acting for a "company called Cable Sands Pty Ltd, it's now called Bemax Cable Sands Pty Ltd" and he had received information which " ... wasn't from Cabinet, it was from the department, as I recall, I mean ... I'm sure it wasn't from Cabinet, er the

information relayed to me was the Government was not going to change its position, it was going to allow mining to continue ...".³¹

[73] Mr Halden was asked what the connection was between that information and Cabinet, and he replied that it was decided at Cabinet, but he learned of the information from the department after the Cabinet discussion. Mr Halden said he rang the department to ask "... what was happening and I was advised that the matter had gone to Cabinet and this was the Cabinet decision".³²

[74] Mr Halden was asked which department this was and he said CALM (the then Department of Conservation and Land Management). Mr Halden was asked who had given him the advice and he said he had just rung the department "got put through, someone told me".³³ Mr Halden said he did not have someone in that department with whom he dealt regularly.

3.4.3 Coburn

[75] This related to a proposal by Gunson Resources Limited, a Perth-based Australian mineral exploration company, to develop a mineral sands mine at Coburn, 84 kilometres south-east of Denham and approximately 20 kilometres south of Hamelin Pool in the Shire of Shark Bay, Western Australia (refer paragraph [33] of this report). The Government decision to permit mining was made by the then Minister for the Environment, the Hon Mark McGowan MLA, on 22 May 2006.³⁴

[76] Mr Halden said he was acting for Gunson Resources Limited, and said "um again it was just a question of you know, um has, has a decision been made, er when are we likely to be advised".³⁵

[77] Mr Halden said that he spoke to a public servant in the EPA and said:

*Er on that occasion, in fact I think I was told it had been deferred ... [by] Cabinet, or perhaps, no maybe that's not quite correct. It might be no decision or deferred, there was no outcome as such.*³⁶

3.4.4 Mauds Landing, Ludlow and Coburn

[78] In relation to all three of the issues Mr Halden was asked at interview whether he had received the information before it was publicly known. Mr Halden said that in each case it was before the decision was publicly known but not long before, and when asked how long before Mr Halden replied: "in every instance less than a week". Mr Halden was also asked if he had received similar information in relation to other matters and his response was "No".³⁷

3.5 Commission Inquiries

[79] Commission inquiries established that the relevant decisions on these matters were not made by Cabinet. In relation to Mauds Landing the decision was

made by the Premier. In relation to Ludlow and Coburn the decisions were made by the Minister for the Environment.

3.5.1 Three Government Decisions

3.5.1.1 Mauds Landing

- [80] The application by Coral Coast Marina Development Pty Ltd to develop a Coral Coast Resort at Mauds Landing (refer paragraph 65 of this report) attracted a considerable amount of high profile opposition, based mainly on environmental concerns about possible damage to the marine environment, including the Ningaloo Reef.
- [81] On 4 July 2003 the then Premier, the Hon Geoff Gallop MLA, announced at Coral Bay that the Government had rejected the application. Dr Gallop released a Ministerial Media Statement on the same day (refer paragraph [65] of this report).
- [82] It is likely that the media was informed that a decision was going to be announced, as they travelled to Coral Bay with the Premier and others. According to debate in the Legislative Assembly, Parliament of Western Australia, on 13 August 2003 two planes were chartered to go to Coral Bay, and there were a significant number of media representatives on board.³⁸ The ABC reported the decision from Coral Bay at 12:24 p.m. on 4 July 2003. An ABC reporter, Mr David Weber, said: "... this is a decision that the Premier took ownership of himself. It wasn't something that went to Cabinet ...".³⁹

3.5.1.2 Ludlow

- [83] There was considerable opposition, on environmental grounds, to the proposal by Cable Sands to develop a mineral sands mine at Ludlow (refer paragraph [32] of this report).
- [84] The Government decision to approve mining, subject to improved environmental outcomes, was announced by the then Minister for the Environment, the Hon Dr Judy Edwards MLA, who released a Ministerial Media Statement on the same day (refer paragraphs [70]-[71] of this report).

3.5.1.3 Coburn

- [85] Gunson Resources Limited proposed to develop a mineral sands mine at Coburn in the Shire of Shark Bay (refer paragraph [75] of this report).
- [86] The EPA assessed the proposal and on 22 May 2006 the then Minister for the Environment, the Hon Mark McGowan MLA, issued a Statement that a Proposal May be Implemented (Statement No. 000725) which permitted the development of the mine, subject to certain terms and conditions.⁴⁰

3.6 Private Examination of Mr Halden

- [87] The Commission conducted a private examination of Mr Halden on 11 September 2008.
- [88] Section 140(2) of the Act says that the Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.
- [89] The Act assumes that an examination will be conducted in private hearing, **unless**, having regard to those criteria, the Commission considers it is in the public interest to conduct the hearing in public.
- [90] In this case, the Commission was only at the stage of a preliminary investigation the purpose of which was to assess the allegation. If that assessment were to lead to a decision under section 33(1) of the Act that further investigation of possible misconduct by public officers was required, public exposure of Mr Halden's evidence at that early stage could potentially have compromised the further investigation. In addition, were there to be such an investigation, Mr Halden could have been called then for examination, with other witnesses, at a public hearing. In these circumstances the Commission did not consider it was in the public interest to have Mr Halden's evidence on the preliminary investigation to be taken in a public hearing.
- [91] Mr Halden was a Member of the Legislative Council of the Parliament of Western Australia between 1986-2000. Subsequent to this Mr Halden was the Western Australian State Secretary of the Australian Labor Party and worked for a public relations company before setting up Halden Burns (refer paragraph [27] of this report). At a private examination on 11 September 2008 Mr Halden described Halden Burns as a "one-stop communication service", and that the "business is not a lobbying company where lobbying is the major component ... lobbying is probably five to 10 per cent" of the work undertaken by Halden Burns. Mr Halden said that the staff of Halden Burns "are all journalists", apart from "our support person" and myself, a "former politician".⁴¹
- [92] Mr Halden defined lobbying as "... positioning your client with whatever information you may have about what is the Government's policy or the Government's objective in regards to certain matters and allowing them to present the best argument or the best case ... to Government".⁴²
- [93] Mr Halden agreed that the comments attributed to him in Mr Taylor's article of 31 May 2008 were accurate. He said that he made the comment about receiving cabinet information from public servants in the context that he was denying having received such information from Cabinet Ministers. Mr Halden said: "It's not my habit to ever ask a Cabinet Minister about what happens in Cabinet".⁴³

[94] Mr Halden was asked whether he stood by the correctness of what he had said in his 9 June 2008 interview by the Commission in relation to receiving information from Cabinet, and he replied “yes”.⁴⁴

[95] Mr Halden was asked what he had meant by the “indiscreet release of information to [him] by public officials”. He said:

*Basically, I think the public officials – as I rang up and asked them, “Where is – what’s the status of this? When are we going to hear about it?” on behalf of the companies I was representing – were just trying to be helpful. To the best of my knowledge they weren’t, you know, executive officers or they weren’t senior public servants. They were just public servants doing their job and responding to an inquiry. Probably having some knowledge that these were important for my clients. I don’t know that, I’m assuming that but – and they gave out information with the intent of answering my question, but they just went too far.*⁴⁵

[96] Mr Halden agreed that what he had told Mr Taylor⁴⁶ was that the public servants he had spoken to had been involved in writing Cabinet briefing notes. However, during the private examination Mr Halden said that he didn’t actually know whether they had been involved in writing Cabinet briefing notes. “... I’m wrong and I’m quite happy to suggest that to you. I don’t know who wrote the Cabinet briefing note, but I do know what people told me.”⁴⁷ Mr Halden was asked whether he had some discussion with those people about a Cabinet briefing note, and he said “No”. Mr Halden was then asked why he had said that to Mr Taylor and he said “I don’t know. It was just said. I don’t have an answer for that question”.⁴⁸

[97] Mr Halden was asked whether he was protecting people who had supplied him with the information, because he knew that the Commission would have been able to ascertain who had written a Cabinet briefing note. Mr Halden replied:

*No, that’s not the reason. As I said to you, it’s very rare for one person to write a Cabinet briefing note. I think it’s fairer to say that it was my indiscretion in talking to the journalist and making a statement that is just wrong in fact rather than anything else.*⁴⁹

[98] In relation to each of the specific issues that Mr Halden referred to, he said during the private examination, that he had telephoned the receptionist at DPC or the EPA (or the Premier’s Office) shortly before the decisions were announced and had been put through to a public servant who had given him information. Mr Halden said that he considered the amount of information he was given was “indiscreet”.

[99] Mr Halden said that he was not able to identify the public servants with whom he had spoken.

3.6.1 Mauds Landing

- [100] Mr Halden's client in this matter was Coral Coast Marina Development Pty Ltd. He agreed, during the private examination, that his role was to obtain approval for a tourist development, a marina, at Ningaloo.⁵⁰ Ultimately it was not approved and the announcement was made by the Hon Dr Geoff Gallop, the then Premier of Western Australia, at Mauds Landing on 4 July 2003.
- [101] Mr Halden said his company was probably only engaged in the last six months of the campaign to "attempt to turn around the media and the community as to the benefits of this proposal ...".⁵¹
- [102] Mr Halden was asked if they had met with any Government officials in relation to the development and he said that he, or the proponents, might have spoken to Mr David Hatt, who was Chair of a Cabinet planning subcommittee (the Coral Coast Parks Advisory Committee).
- [103] Mr Halden said he received information about the forthcoming announcement before the Premier had made it. He was asked questions and provided answers as detailed below.

Prior to Premier Gallop making that public announcement, were you aware that that was going to be the announcement? - -Yes.

How did you become aware of that? - -I rang - I'm not sure whether it was the Premier's Office or the Department of Premier, but I rang and asked when was the client, again, going to be advised as to what the decision of Government was going to be in regards to this matter.

Yes? - -And I was advised that the Premier was going to be flying to - probably Exmouth; whatever, whatever town, but was going to be flying there and that he was going to be making an announcement and the announcement would be that it was not going to go ahead.

When were you told that in relation to when the Premier's announcement was in fact made? - -Two or three days before.

Okay, and in that particular instance you rang Department - you said either the Premier's office or the Department of Premier and Cabinet? - -Yes; yes.

And again, you would have introduced yourself, said who you were acting on behalf of, said what the matter was, and were you in that case put through to somebody that knew about the matter? - -Yes.

Had that person been involved in a Cabinet decision sheet? - -I don't know.

Or sorry, briefing note? - -I don't know. But that person knew the answer.

Did they tell you that they had been involved- - -?- - -No, but they knew the answer.

- - - in writing the briefing note for Cabinet?- - -No, they didn't, but they knew the answer.

Okay, and do you recall who that person was?- - -No.

Was that person male or female?- - -Yeah. No, it was male.

And you can't say with certainty whether that person was working in the Premier's office or generally within Department of Premier and Cabinet?- - -No, I can't; no.

And it was your telephone call, so you initiated the contact?- - -That's correct, yes.

And it would have been two or three days before Premier Gallop - - -?- - -Might have been four, but it wasn't a week. It was just a matter of days.

Okay. In relation to this matter, what information is it that you are saying was a leak from Cabinet?- - -I was told the Premier's decision. I was told when he was going to make it, how he was going to get there. Can I just say, interestingly, the company was actually never advised of the decision formally by government. So in spite of my request and in spite of the answer, they were never formally advised.

So the leak of Cabinet information that you are speaking about in relation to this particular is the information that you were provided by this male person about the Premier making the announcement and what the announcement was going to be?- - -And where.

And where the announcement was going to be made?- - -Yes; yes, and when.

And the person that you spoke to told you that the matter had been dealt with in Cabinet?- - -No. I can't confirm that. He told me that this was what was going to happen. I don't know that that was said. I can't recall that. That would be too much reconstruction to be valid.⁵²

[104] Mr Halden said he had thought at the time that the matter was going to be dealt with in Cabinet, but that was based only on media speculation. Mr Halden was asked:

So you hadn't made - any telephone conversations to the EPA or to the Minister or to DPC about whether this matter was going to be dealt with in Cabinet at an earlier stage?---To the best of my recollection, no.⁵³

[105] During the private examination Mr Halden was shown a letter which he had written to a Director of Coral Coast Marina Development Pty Ltd on 11 November 2003. The letter set out Mr Halden's "... recollection of events during the period 2nd to 4th July, pertaining to the Premier's decision to not grant an approval for the Maud's [sic] Landing project to proceed".

[106] The letter provided a timeline of events. It included the following:

- *The Appeals Convenor's report was presented to the Premier on the July 2nd 2003.*
- *That evening Peter Kennedy the ABC senior political journalist in Perth reported that he had been reliably informed that the Premier would be announcing that the project would not go ahead. This would be announced at the Australian Labor Party's State Conference on the weekend of July 5-6.*
- *On the 3rd of July I rang the Premier's Department and the Minister for State Development's Office seeking confirmation that the ABC report was correct. I was advised that by both offices that they did not know whether the Premier had made a decision on the project.*

...

- *I was subsequently told that the Appeals Convenor's decision was not referred to cabinet.*

...

- *Late on the evening of 3rd July I was informed that the Premier would be flying to Coral Bay the next day and announcing that the project would not be proceeding.*
- *On July 4th the Premier flew to Coral Bay and made the announcement that the project would not go ahead.*

[107] Mr Halden's letter concluded:

These are my recollections of events during the period 2-4 July. I am vague as to who told me what. This is probably because so many discussions were held on July 3 in [an] attempt to clarify the situation.⁵⁴

[108] Mr Halden said that he recalled being advised by the Premier's Department or Office that the Premier would not be approving the project, but in relation to contacting the Office of the Minister for State Development he said "I don't recall it now but I believe the letter, yes".⁵⁵

[109] There was then the following exchange:

You have said there in that letter that you were advised by both officers that they did not know whether the Premier had made a decision on the project? - -Yes.

That doesn't seem to be consistent with what you have said today. How do you explain the difference? - -The difference is only that that was my recollection when I was talking to Peter Kennedy - sorry, to Robert Taylor and this is the letter that I wrote then, which is probably correct, by the way, but my memory of these events is my memory as I said to Taylor and said here.

So you are accepting what's written in the letter closer to the time is probably - -?- -Yes.

- - - the accurate account? - -Yes.

And the accurate account is then that you were told nothing about what the decision was going to be at that time. Is that right? - -At that time, yes.⁵⁶

[110] Mr Halden then reiterated that he had been given the information about the announcement by the Premier in advance, although he now accepted that it was on the day before the announcement, not earlier.

So it appears that during the day of the day before the announcement you, as the person representing the company, was stonewalled by the Government officers - - -?- -Absolutely.

- - - until late in that evening and then you were told - - -?- -Yes.

- - - the day before the announcement? - -Yes.

What was not right about that? - -I guess what was not right was - I was only looking for when were we going to be told. I'm told the decision. I'm told where it's going to happen. I'm told all the component bits.

Yes? - -I didn't ask for that. I didn't need to know that.⁵⁷

[111] After some further discussion about whether Mr Halden considered that the public officer he spoke to had acted reasonably in providing him with information about the forthcoming announcement, Mr Halden made the following statement:

... They were - they were trying to be helpful but my view was they were being - they'd gone a step beyond being helpful in terms of the information or the degree of information that was being provided. So it's that that I'm saying, but I'm - you know, as we've had this discussion today I am forced to concede that my view about what is confidential and not perhaps was harsh and is perhaps unreasonable but it was still my view, and in this instance and the other one is still my view.⁵⁸

3.6.2 Ludlow

[112] Mr Halden said he had been engaged by Cable Sands to assist them to obtain Government approval to mine at Ludlow.

[113] The EPA had recommended in favour of the mine, with environmental conditions. There were a large number of appeals against the EPA recommendation. The mine was approved by the then Minister for the Environment on 23 September 2003.

[114] Mr Halden was asked if it was a Cabinet decision to allow the mine, he said "No, it was a Ministerial decision, I think".⁵⁹

[115] Mr Halden was then asked why, if it wasn't a Cabinet decision, it was one of his examples of information which had been leaked to him from Cabinet. Mr Halden said:

... it came to the company's attention that perhaps this was going to go to Cabinet. There's every opportunity to take EPA approvals to Cabinet and to have Cabinet either formally or informally assess them. That came as a piece of information to the company, to which I was asked to check out was it going to go to Cabinet for Cabinet to review the matter.⁶⁰

[116] Mr Halden was asked whether he did try and find out and he replied "Yes".

[117] Mr Halden was then asked "Who did you phone to try and find out?". He replied:

I literally just rang the Department – again I might be wrong with the name, but Premier and Cabinet, if I can call it – and I asked if someone could advise me of whether or not this matter was to be considered or had been considered. Would our clients be advised as to any of those things? I didn't want a decision. I just wanted to know was there going to be anything and would we be advised if there was going to be any movement? I was put through to somebody who I put the same question to and they said that, to the best of their knowledge, it wasn't going to be reconsidered.⁶¹

[118] Mr Halden was asked "Who was that person you were put through to?". He replied:

*I've got no idea. I mean, the receptionist put me through, at the time I was – I'm quite sure I was probably in Ludlow Forest ringing on the mobile so it wasn't – it was – it was whoever they put me through to.*⁶²

[119] Mr Halden said that the person he spoke to told him that the matter had not gone to Cabinet. He was then asked: "What is the information that you were provided with in advance of it being released to the public?" Mr Halden replied: "It hadn't gone to Cabinet".

[120] Mr Halden was then asked:

So when you're talking about a leak from Cabinet you're talking about receiving information that this matter was not going to Cabinet?

[121] Mr Halden replied:

*Yes and that – because its not – it may well have been going to Cabinet, I don't know, but my – the – my view is that that's not information that should be just given out, it should be provided to the company directly.*⁶³

[122] It was put to Mr Halden that usually when someone refers to a leak from Cabinet they are referring to information that has been discussed in Cabinet and given to them. Mr Halden agreed, but said "I think this was an indiscreet comment".

[123] Mr Halden was asked, during the private examination, why, that if he considered being given the information that the matter was not going to Cabinet to be "indiscreet", he had phoned DPC asking for that information. Mr Halden said that he did not necessarily have to be told whether it was or was not going to Cabinet "because there's a third answer ... That is, your client will be advised on such and such a date as to what this – what – what the Government, Cabinet, or the Minister is proposing to do".⁶⁴

[124] It was put to Mr Halden that he had said that he needed to find out – is this matter going to Cabinet – and that was the question he had asked. Mr Halden replied:

*... I don't know the question I asked and five years later you don't, but what I was trying to elicit for my client is what was the process and when would they know about that process.*⁶⁵

[125] Mr Halden also said that the issue his client was concerned about was the delay in decision making, because it could have financial consequences.

[126] The Commission attempted to obtain some specific information from Mr Halden about to whom he had spoken. Mr Halden agreed when it was put to him that it would have been a reasonably senior public servant with access to

the file, and he said it would have been someone in the Cabinet Office. He reiterated that he had “more than likely” just phoned the DPC switchboard number.

- [127] He was asked whether he was aware of the Ministers decision, on 23 September 2003, before it was publicly announced, and he said he was not. He said that the decision was not leaked to him.

3.6.3 Coburn

- [128] Mr Halden said that he had been retained by Gunson Resources Limited to assist them in gaining approval for mineral sands mining at Shark Bay. The proposal was approved by the then Minister for the Environment on 22 May 2006.
- [129] Mr Halden said the advice his company supplied to Gunson Resources was principally related to dealing with the media, the local community, committees, and the EPA.
- [130] He agreed that the process was similar to that for the Ludlow decision in that the EPA did an assessment and provided a recommendation to the Minister, and the Minister then made the decision.
- [131] Mr Halden was asked whether the matter had gone to Cabinet and replied: “To my knowledge, no it didn’t”.
- [132] Mr Halden said that after the EPA recommendation had been made, but before the Minister had made a decision, he took the following step:

I telephoned the EPA in this instance to ascertain whether there was likely to be any encumbrances in their – in their approval being made public, and if there were would the client be advised and when would the client be advised.⁶⁶

- [133] He said that he did not have a particular contact at the EPA and agreed that, as for the other cases, he had rung the general reception number and was put through to the relevant person. He did not identify that person. He said that he did not expressly ask whether the decision was going to be made by Cabinet.

I was asking about whether there was going to be any delays, when will we would [sic] be advised about the likelihood of a Ministerial approval. When could we get on and mine, if you like.⁶⁷

- [134] He said he was told:

it was going to be referred to the Minister and there was unlikely to be any delays, other than – other than the Minister’s contemplation of his decision.⁶⁸

[135] It was put to Mr Halden that during his interview at the Commission on 9 June 2008 he had said that he had been told that the decision was going to be deferred. He was asked what he had meant by that. He said "... what I meant was that any decision that it was going to go to Cabinet wasn't going to happen". He said that he wasn't specifically told that when he called the EPA.

I was told that it wasn't going to – it was going to the Minister and there was unlikely to be any encumbrance on that process.⁶⁹

[136] Mr Halden said he understood that to mean it wasn't going to be deferred, which meant that it wasn't going to Cabinet: "You see, if its deferred, it would be deferred to Cabinet".

[137] Mr Halden was asked: "So why is this an example that you gave of a leak from Cabinet?" He replied:

Again it goes back to what I was saying. Its just the progression of matters, as I saw it, as being indiscreet. It wasn't just the answer to the question that I was asking but it was just the level of indiscreetness [sic].⁷⁰

[138] Mr Halden was asked: "Why is that confidential in the circumstances?". He replied:

It's probably personal opinion. I thought it was but its, as I say, it might not be, it could be a view that its not. At the time when I was talking to Robert Taylor thought that this was indiscreet but at the lower level but it may not be.⁷¹

[139] Mr Halden agreed that it was not information from the deliberations that had been leaked to him, nor was it information concerning Cabinet deliberations which would happen. The information he received was that the matter was not going to Cabinet "and was going to proceed in the normal path", by which he meant it would be decided by the Minister. It was put to Mr Halden "that that isn't an ordinary meaning of the phrase 'leak from Cabinet'". He replied: "Yes. On the basis of this discussion I have to be drawn to that end, yes".⁷²

[140] Mr Halden was not specifically asked who he had spoken to at the EPA and did not volunteer any information about the identity of the person.

3.6.4 Private Examination: General Questions

[141] At the end of the private examination Mr Halden was asked further questions and replied as detailed below.

Are there any other instances where you have received leaks of Cabinet information?- -I'm not aware of any, no.

Again, I ask you the information that you have provided to the Commission today is that the information that you were thinking of when you spoke to Robert Taylor? - -Yes.

It's not information that you've tried to come up with so as to have an explanation and to protect public officers that have in fact provided you with confidential Cabinet information? - -It's not.⁷³

3.7 Other Evidence Obtained by the Commission

- [142] In the course of its inquiries the Commission obtained other documents which may have been relevant to this matter, including telephone records and documents from Halden Burns, DPC and the EPA. These records were of limited assistance in verifying Mr Halden's account of his telephone conversations with public servants. In the time periods specified by Mr Halden the telephone records show some calls made from a telephone Mr Halden used to the reception number for DPC (which is also the reception number for other departments and Ministerial Offices). On one hand this tends to add weight to Mr Halden's account that he called the receptionist and was put through to an unidentified public servant. However, the timing of these calls, and the fact that they were interspersed with calls to various clients of Halden Burns, leaves open the question of the subject of the calls.
- [143] The Commission accepts that it is open to it to make more inquiries to attempt to establish whether Mr Halden spoke to someone in the relevant Departments or offices and, if so, who. However, as explained below, the Commission does not consider that the additional expenditure of resources on further inquiries into this matter would be justified.

3.8 Assessment by the Commission

- [144] On the information available to the Commission the situation appears to be as detailed below.
- Mr Halden told Mr Taylor, a senior journalist, that he had been provided with Cabinet information "indiscreetly" by public servants.
 - When questioned by the Commission Mr Halden identified three instances which he said were in his mind when he made that comment to Mr Taylor. These related to Government decisions about a proposed tourist development at Mauds Landing, and proposals for mineral sands mining at Ludlow and Coburn.
 - In each case Mr Halden said that he had received the information after phoning the reception area of the department in question, either DPC (or the Premier's Office) or the EPA. He was then put through to "someone" who gave him information.

- In each case the information which Mr Halden said was supplied to him appeared to be only about the process which was being followed by the Government in making and announcing the decision.
- Mr Halden said that he was not able to identify the officers he spoke to in those departments.
- Additional information obtained by the Commission has not assisted in identifying those officers.
- In relation to Mauds Landing the relevant decision was made by the then Premier. In relation to Ludlow and Coburn the decisions were made by the then Ministers for the Environment. It does not appear that there was a Cabinet decision in any of the cases.
- In none of the cases was Mr Halden able to identify “Cabinet information” which had been supplied to him. Mr Halden said that when he referred to being told “what happened in Cabinet” he included being told something that enabled him to infer that it would not be going to Cabinet.
- Mr Halden said that he felt that in each case he had been told too much by the public servants in question.

[145] The Commission has little evidence other than Mr Halden’s account about these matters. However, in relation to the Government decision on the proposal for a resort development at Mauds Landing it has obtained a copy of a letter dated 11 November 2003 from Mr Halden to his client, Coral Coast Marina Development Pty Ltd. Quotations from the letter, and Mr Halden’s evidence in relation to the letter, are at paragraphs [105] to [107] of this report. The letter contains a timeline of when and how Mr Halden found out about the Premier’s decision and announcement.⁷⁴

[146] In his evidence to the Commission Mr Halden said that he had rung either DPC or the Premier’s Office “two or three days before” the decision and had been told “that the Premier was going to be flying to - probably Exmouth; whatever, whatever town, but was going to be flying there and that he was going to be making an announcement and the announcement would be that it was not going to go ahead”.⁷⁵ From the context it appears that he considered that being given this information well in advance of the announcement was indiscreet.

[147] The Commission notes that Mr Halden said, at a private examination by the Commission on 11 September 2008, that he accepted that what he wrote in the letter was “the accurate account”.⁷⁶

[148] In the Commission’s view, the information in the letter differs significantly from the evidence of Mr Halden to the Commission at the private examination (before the letter was put to him).

- [149] In his letter Mr Halden said: “On the 3rd of July I rang the Premier’s Department and the Minister for State Development’s Office ... I was advised that by both offices that they did not know whether the Premier had made a decision on the project.” He then stated in the letter that he was informed about the Premier’s impending decision “Late on the evening of 3rd July”. The decision was publicly announced on 4 July.
- [150] Mr Halden did not identify the source of this information although, given that a media contingent travelled to Coral Bay the next morning with the Premier, it seems logical to assume that a number of people, including elements of the media, knew at that stage that a decision was to be announced and either knew, or assumed from the circumstances, what decision had been made by the Premier.
- [151] When Mr Halden was asked to confirm, during a private examination on 11 September 2008, that he was notified “two or three days” before the decision he replied: “Might have been four, but it wasn’t a week”.⁷⁷
- [152] When Mr Halden was asked further during the private examination “what information is it that that you are saying was a leak from Cabinet” he replied “I was told the Premier’s decision. I was told when he was going to make it, how he was going to get there”.⁷⁸
- [153] On a consideration of Mr Halden’s evidence as a whole, in the circumstances otherwise shown, together with the difference between his evidence and the account he gave in his letter dated 11 November 2003, the Commission is unable to conclude his allegation of misconduct by one or more unnamed public officers (as implied in his evidence and statements to the media), has any reasonable substance.
- [154] Even assuming that Mr Halden’s account was accurate, and he did speak to public servants who provided him with the information he said they did, there is no reasonable basis upon which it might be concluded any public officer involved may have engaged in misconduct. In each case Mr Halden was acting on behalf of a company making a proposal to Government and, on his account, seems to have been provided with fairly straightforward information about the process being followed by the Government shortly before a decision was publicly announced. Even if it was accepted that the information went beyond what should have been provided to Mr Halden, there is no evidence that the information was confidential information which it would have been a breach of duty to disclose to him in the circumstances, nor that the public officers providing the information had any purpose other than to be helpful. There is no evidence available to the Commission which, in the Commission’s view, suggests that any public officer acted from an improper motive or with a corrupt intention.
- [155] Accordingly, even accepting Mr Halden’s account of what he was told, the information allegedly supplied to him by public officers would not, in the Commission’s opinion, be capable of constituting misconduct in terms of section 4 of the Act.

3.9 Conclusion by the Commission

[156] On the basis of the information before the Commission it has made the following assessment.

- Neither the information supplied to the Commission, nor any other information obtained by the Commission, is capable of causing the Commission to form an opinion that any public officer has engaged in misconduct in respect of this matter.
- Other information available to the Commission casts doubt on the accuracy of Mr Halden's account about what information he was provided, and when.
- The Commission considers it unlikely that further inquiries into this matter would be likely to enable it to form an opinion that any public officer had engaged in misconduct, and does not consider any further investigation to be justified.

CHAPTER FOUR COMMISSION OPINION

4.1 Commission Opinion as to Misconduct

[157] On the information currently available to the Commission there are insufficient grounds for it to form an opinion that any public officer has, or may have, engaged in misconduct by providing confidential information about Cabinet deliberations and decisions (or at all) to Mr John Halden.

APPENDIX

Text of Article Entitled “Halden says lobbying is all about skills, not contacts”, *The West Australian* Newspaper, 31 May 2008, pp.6-7.

Halden says lobbying is all about skills, not contacts

John Halden is seen as the architect of WA Labor's 2001 election victory, a win that many in Labor believed was not possible just eight years after Carmen Lawrence was thrown out of office on the back of the WA Inc scandals.

Now, with Brian Burke and Julian Grill put out of the lobbying business by the Corruption and Crime Commission, the former Labor Party State secretary and Upper House MP is the go-to man for businesses seeking access to all levels of government.

But with more than 30 companies on the books of the firm he runs with former journalist Anne Burns - including mining giant Rio Tinto, tobacco producer Phillip Morris and media mogul Kerry Stokes through Channel 7 - Mr Halden's closeness to the Carpenter Government has raised questions about whether his clients enjoy access not afforded others.

Those questions intensified when senior Halden-Burns consultant Karen Brown was hand-picked by Alan Carpenter to contest the relatively safe Labor seat of Mt Lawley at the coming State election.

Mr Halden will manage Ms Brown's campaign just as he did that of Sharryn Jackson when she regained the seat of Hasluck in last November's federal election.

He also helps with fundraising and is still sought out by influential party officials such as State secretary Bill Johnston for advice on campaign strategy. In the leadership battle that followed Geoff Gallop's surprise resignation in January 2006, Mr Halden played a crucial role in Alan Carpenter's ascension to the top job.

"People called me, there was an issue about would I support Jim

"Lobbying is about making the best representation on behalf of your client."

LOBBYIST JOHN HALDEN

(McGinty) or would I support Alan. What should they do?" he said.

"They were probably caught in a similar situation to me, they were long-term friends of Jim's, factional colleagues of Jim's, factional enemies of Jim's, so people had discussions about that. I was a Carpenter supporter, I thought he would be the best Premier."

Mr Halden claimed he "could not recall" whether Mr Carpenter rang him during that period but if he had "it couldn't have been a great conversation at great length".

But for all his contact and influence within the Labor Government, Mr Halden insists it is his strategic skills, not his contacts that define his lobbying efforts.

"Lobbying is about making the best representation on behalf of your client that you possibly can," he said. "It's not about trying to create an outcome by any other means other than that.

"We know for example some ministers don't like the concept of PPPs (public private partnerships) so when a client comes to you proposing that, you advise them accordingly. But in terms of picking up the phone and talking to a public servant, an adviser, a politician or a minister more particularly about trying to secure an outcome, we just don't do that. The outcome is based on the campaign, the plan we have."

One of the defining moments of the CCC's lobbyist inquiry was when ministers Norm Marlborough and John Bowler were shown to have leaked Cabinet considerations to Mr Burke and Mr Grill.

Mr Halden concedes that he too has received Cabinet leaks but said they came from "indiscreet" public servants not ministers.

"People tell you what happened in Cabinet quite indiscreetly," he said.

"You don't have to ask. They'll tell you, they'll say what they wrote in a Cabinet briefing note. They'll tell you 'This is what Cabinet decided on yesterday'."

Mr Halden said he supported Cabinet confidentiality but firms directly involved in Cabinet decisions should know about them.

"Cabinet is not about necessarily exposing confidential information of a party to the world. The investment decisions of BHP for example don't need to be known in the world but the Government decision will significantly impact upon that ... so BHP should know."

Unlike Mr Burke, Mr Halden claims Health Minister and Attorney-General Jim McGinty - the man with ultimate responsibility for the CCC - as a friend but says he has discussed business on behalf of clients with Mr McGinty only "twice in seven years" although he conceded he dealt rather more frequently with Mr McGinty's chief-of-staff, [name suppressed].

"[name suppressed] is a particularly ethical bloke and if you asked an inappropriate question or wanted something that wasn't above board he wouldn't do it and he would tell you so," Mr Halden said.

One of those issues concerning the health portfolio is tough new tobacco regulations which are expected to extend the ban on smoking to public open spaces. Mr Halden, through his representation of [name of company suppressed], expects to be involved in the drafting of those regulations.

"At the moment, they are expecting government rollout of legislation of the type suggested and there is no suggestion that we will be involved in any pushback of that legislation. Our role again will be to make sure the regulation is sensible, readable and you can adhere to it and so that our client can comply with it," he said.

Asked whether that shouldn't be someone else's job, Parliament's for instance, Mr Halden was scathing of the drafting skills of bureaucrats.

"I've seen regulation that is just unworkable," he said.

"I understand what they've been trying to achieve but it doesn't achieve that end so the client, in this case [name of company suppressed], is vulnerable to being fined or having their licence removed over regulation that you can't comply with." Mr Halden rejects suggestions he's the Government's favoured lobbyist and points to his strong criticism of the lobbyist register and regular disagreements with the Government over projects involving his clients as evidence that he has no more sway over Government decision making than other lobbying firms.

"It's very bad lawmaking," he says of the lobbyist register. "And I've said that and I don't resile from that and I'm quite sure that some of my comments might have offended people in the Premier's office."

Yesterday, as if to further display his independent credentials, Mr Halden - who represents developer [name of developer suppressed] - launched a stinging attack on Mr Carpenter, Mr McGinty and Cottesloe Liberal Colin Barnett over their summary dismissal of the ambitious North Port Quay proposal at Fremantle.

"The Premier said that four years ago he was briefed about this, he was then the minister for industrial relations," he said.

"Four years on, this project is very different. I have made phone calls every week for the last two months. I have tried to explain to the Premier or his offsiders this project and he has refused that offer."

Mr Halden also insisted this week that there were many people inside the Labor Party who he had upset in his role as State secretary.

"It's not just as perhaps people perceive it that everyone's my mate in the Labor Party and everyone will pick up the phone," he said.

He also still lives with the scandal surrounding his role in the tabling of a petition in Parliament on behalf of former public servant [name suppressed] that contained an unfounded allegation that his wife's court case was inappropriately helped by then Opposition leader Richard Court.

[name suppressed] committed suicide four days later. A 1995 royal commission into the affair condemned Mr Halden's "glittering indifference to the truth and accuracy". He was charged in 1997 with having lied to the commission but acquitted in late 1998.

He maintains that self-regulation imposed internally through a strict code of conduct is the best defence against claims of favoured treatment.

"It depends how you behave and it depends what sort of procedures you adopt so as to not fall foul of anything that could be considered inappropriate," he said. "I don't have special access I just have access that I think anyone should have to government and sometimes I don't think that access is good enough by companies to government."

ROBERT TAYLOR

ENDNOTES

-
- ¹ Mr Robert Taylor is a senior journalist and the State Political Editor for *The West Australian* newspaper.
- ² Ministry of the Western Australian Government or Cabinet.
- ³ Butterworths Concise Australian Legal Dictionary (Third Edition), Lexis Nexis Butterworths, Australia 2004, p.42.
- ⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361-363; *Rejfeck v McElroy* (1965) 112 CLR 517; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449.
- ⁵ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, pp.5-7.
- ⁶ Environmental Protection Authority Website, <http://www.epa.wa.gov.au/search.asp> , viewed 3 February 2009.
- ⁷ Government of Western Australia, Government Media Office, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=122496&search=gallop+ningaloo&admin=&minister=&portfolio=®ion=>, viewed 3 February 2009.
- ⁸ Bemax Resources NL up to 5 July 2006 (extracted from the Australian Securities and Investments Commission (ASIC) database on 23 July 2008 at 15:19, Historical Company Extract for Bemax Resources Limited).
- ⁹ Coburn Mineral Sand Project, Gunson Resources Limited, *Report and Recommendations of the Environmental Protection Authority*, December 2005, p.i.
- ¹⁰ Environmental Protection Authority Website, <http://www.epa.wa.gov.au/template.asp?ID=1&area=Profile&Cat=About+the+EPA>, viewed 3 February 2009.
- ¹¹ Department of Environment and Conservation Website, <http://www.dec.wa.gov.au/about-us/about-dec/corporate-plan.html>, viewed 3 February 2009.
- ¹² *Public Sector Management Act 1994* (“PSM Act”), *Public Service Regulations 1988*. Regulation 8 has statutory force under section 110 and paragraph 18 of Schedule 5 of the PSM Act.
- ¹³ *Public Sector Management Act 1994* (“PSM Act”), *Administrative Instruction 711: Official Information*. In 1994 the PSM Act was enacted and replaced the *Public Service Act 1978* (“the PSA”). Administrative Instructions were made pursuant to section 19 of the PSA. Although the PSA was repealed, Administrative Instructions made pursuant to section 19 of the PSA continue to have statutory force. This is because section 110 of the PSM Act provides that following the repeal of the PSA, the transitional provisions set out in Schedule 5 have effect. Paragraph 5 of Schedule 5 relates to Administrative Instructions. *Administrative Instruction 711* has not been repealed and therefore continues to be subsidiary legislation.
- ¹⁴ Western Australian Royal Commission into Commercial Activities of Government and Other Matters (WA Inc Royal Commission), Report II, 12 November 1992, pp.9-10, and Commission on Government Report No. 1, August 1995, pp.90-91.
- ¹⁵ Refer Endnote No. 2.
- ¹⁶ *The West Australian* newspaper, 31 May 2008, pp.6-7.
- ¹⁷ *The West Australian* Website, <http://www.thewest.com.au/default.aspx?MenuID=145&ContentID=76945>, audio embedded in article entitled *Lobbyist Denies Any Wrongdoing*, 4 June 2008.
- ¹⁸ ABC News Website, www.abc.net.au/news, 3 June 2008.
- ¹⁹ *The Australian* newspaper, 5 June 2008, p.7.
- ²⁰ *Ibid.*

-
- ²¹ *The West Australian* Website, <http://www.thewest.com.au/default.aspx?MenuID=145&ContentID=76945>, article entitled *Lobbyist Denies Any Wrongdoing*, 4 June 2008.
- ²² Environmental Protection Authority Website, <http://www.epa.wa.gov.au/search.asp>, viewed 3 February 2009, *op cit*.
- ²³ Government of Western Australia, Government Media Office, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/Pages/Results.aspx?ItemId=122496&search=gallop+ningaloo&admin=&minister=&portfolio=®ion=>, viewed 3 February 2009, *op cit*.
- ²⁴ Record of Interview of Mr Stanley John Halden at the Corruption and Crime Commission, 9 June 2008, pp.9-10.
- ²⁵ *Ibid*, p.10.
- ²⁶ *Ibid*.
- ²⁷ *Ibid*.
- ²⁸ *Ibid*, p.12.
- ²⁹ Government of Western Australia, Government Media Office, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/GallopLaborGovernmentSearch.aspx?ItemId=117652&minister=Edwards&admin=Gallop&page=3>, viewed 4 February 2009.
- ³⁰ *Ibid*,
<http://www.mediastatements.wa.gov.au/ArchivedStatements/Pages/GallopLaborGovernmentSearch.aspx?ItemId=115320&minister=Edwards&admin=Gallop>, viewed 4 February 2009.
- ³¹ Record of Interview of Mr Stanley John Halden at the Corruption and Crime Commission, 9 June 2008, *op cit*, pp.7-8.
- ³² *Ibid*, pp.8-9.
- ³³ *Ibid*, p.9.
- ³⁴ Statement (by the Hon Mark McGowan MLA, Minister for the Environment) that a Proposal May Be Implemented (Pursuant to the Provisions of the *Environmental Protection Act 1986*), Statement No. 000725, published on 22 May 2006.
- ³⁵ Record of Interview of Mr Stanley John Halden at the Corruption and Crime Commission, 9 June 2008, *op cit*, p.11.
- ³⁶ *Ibid*.
- ³⁷ *Ibid*, pp.12-13.
- ³⁸ Legislative Assembly of Western Australia, Hansard for 13 August 2003, Ningaloo Reef Coastline Motion.
- ³⁹ ABC Online: The World Today Archive – Friday 4 July 2003, 12:24:03 p.m.
- ⁴⁰ Refer Endnote No. 34.
- ⁴¹ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, pp.5-7, *loc cit*.
- ⁴² *Ibid*, p.7.
- ⁴³ *Ibid*, p.11.
- ⁴⁴ *Ibid*, pp.14-15.
- ⁴⁵ *Ibid*, p.17.
- ⁴⁶ Refer Endnote No. 1.
- ⁴⁷ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, p.17, *loc cit*.
- ⁴⁸ *Ibid*, pp.17-18.

⁴⁹ *Ibid*, p.18.

⁵⁰ *Ibid*, p.60.

⁵¹ *Ibid*.

⁵² *Ibid*, pp.62-64.

⁵³ *Ibid*, p.64.

⁵⁴ Letter to Mr Alan Smith, Director, Coral Coast Marina Development Pty Ltd, of 11 November 2003 from Mr John Halden [E 17730].

⁵⁵ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, *op cit*, p.67.

⁵⁶ *Ibid*, p.68.

⁵⁷ *Ibid*, p.69.

⁵⁸ *Ibid*, p.72.

⁵⁹ *Ibid*, p.27.

⁶⁰ *Ibid*.

⁶¹ *Ibid*, p.30.

⁶² *Ibid*, p.31.

⁶³ *Ibid*.

⁶⁴ *Ibid*, p.33.

⁶⁵ *Ibid*.

⁶⁶ *Ibid*, p.52.

⁶⁷ *Ibid*, p.53.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*, p.54.

⁷⁰ *Ibid*, p.55.

⁷¹ *Ibid*, p.56.

⁷² *Ibid*.

⁷³ *Ibid*, p.73.

⁷⁴ Letter to Mr Alan Smith, Director, Coral Coast Marina Development Pty Ltd, of 11 November 2003 from Mr John Halden [E 17730], *op cit*.

⁷⁵ Transcript of Proceedings, Private Examination of Mr Stanley John Halden on 11 September 2008, p.62.

⁷⁶ *Ibid*, p.68. *Loc cit*.

⁷⁷ *Ibid*, p.63.

⁷⁸ *Ibid*.