

MINORITY REPORT

by

Honourable G W Jennings MLC

Honourable T C Theophanous MLC

Pursuant to Term of Reference (n)
Resolution of the Legislative Council, 19 March 2002

FINDINGS

Finding 1. No Inappropriate Intervention by any Minister

The extensive documentation provided to the Select Committee (448 documents) and the subsequent hearings by the Select Committee involving 19 witnesses and some 424 pages of transcript have demonstrated that there was no inappropriate intervention by any Minister in the process of selecting a new CEO for the Urban and Regional Land Corporation (URLC).

The Majority Report identifies only limited and appropriate involvement in the selection process by Ministers.

Minister Thwaites was involved in the selection process on only three occasions:

- On 9 April 2001 his Departmental Secretary, Professor Lyndsay Neilson, briefed him on the forthcoming process to select and appoint a new Chief Executive Officer for the URLC.
- On 3 August 2001 he requested that the Chairman of the URLC be invited to fully participate in this second round and approved Professor Neilson's advice to him that a second round of interviews be conducted to allow proper advice to be provided to Ministers.
- On 20 September 2001 he wrote, on the basis of advice from his Departmental Secretary and the unanimous recommendation of the second selection panel, to the Chairman of the URLC to advise the Board of the URLC of the view of both himself and the Treasurer that the URLC Board should consider the appointment of Mr Jim Reeves as Managing Director, to provide the necessary change management, experience in large,

complex urban renewal activities, and leadership in responding to the URLC's new role and functions.

Minister Brumby's action was limited to one letter of 25 September 2001, on advice from his Department, to the Chairman of the URLC acknowledging the Chairman's letter of 17 August and advising that he would consult with the Minister responsible for the URLC Act, the Minister for Planning.

The Premier was not involved in the selection process at any stage.

Finding 2. Limited and Narrow Advice Provided to URLC Board Members to Assist in their Initial Decision

Evidence presented to the Select Committee has revealed an extraordinarily narrow level of documentation provided to URLC Board members by their selection sub-committee to assist them in selecting a new CEO which is the single most important decision the URLC Board was likely to make.

The interventions by Board member Ms Angie Dickschen as chair of the Selection Sub-Committee had the effect of ensuring that the candidacy of Mr Jim Reeves was presented to the Board in the worst possible light and Ms Dickschen's preferred candidate was presented in the best possible light. These actions included the presentation of a limited and inadequate report to the Board, preventing her colleague Mr Frank Davis from taking any effective role in the consideration and preparation of this report and excluding Professor Neilson from any role whatsoever.

Finding 3. Full Impact of Changes to the Act not Reflected in Board's Decision Making Process

Evidence to the Select Committee also makes it clear that the full impact of the changes to their governing Act and new functions of the URLC were not reflected in any substantive way by the Board and its selection sub-committee in their establishment of the candidate selection process, the interviews and surrounding assessments or the initial decision of the Board.

Finding 4. Exclusion of Professor Neilson from preparation of Interview Panel's Report to the Board

Professor Neilson was excluded from any role in the preparation of the report of the Selection Sub-Committee, which went to the Board, despite his membership of the interview panel and his expectation that the panel would meet again to discuss the draft and agree on a final report. At the conclusion of interviews on 15 June 2001 he had specifically requested to see the draft interview report.

Finding 5. URLC Board Failed to Properly Consult with Ministers

The URLC Board is required to appoint its CEO “after consultation with the Minister and the Treasurer” by clause 6(1) of Schedule 1 of the Urban and Regional Land Corporation Act.

The evidence before the Select Committee clearly demonstrated that the Board failed to adequately meet this requirement to consult with the Minister for Planning and the Treasurer prior to appointing a new CEO; presented their decision as a fait accompli; and did not provide information to Ministers that would support the Board’s decision.

Finding 6. Secretary of Department of Infrastructure Acted to Rectify Failure of Board to Consult with Ministers

This failure by the Board to adequately address the consultation requirements of the Urban and Regional Land Corporation Act was rectified by the actions of the Secretary of the Department of Infrastructure, with the support and assistance of the Secretary of the Department of Premier and Cabinet and the then Acting Secretary of the Department of Treasury and Finance, in arranging a second round of interviews to provide effective advice to Ministers to allow them to reach an informed view on the appointment.

This second round of interviews also enabled the substantial changes to the role and functions of the URLC and the consequent changes in the mix and skills required of its CEO to be properly taken into account.

Finding 7. Jim Reeves an Appropriate Appointment

Evidence presented to the Select Committee clearly demonstrates that Mr Reeves was considered a strong candidate for the position; that it was a reasonable decision of the three Departmental heads to recommend his appointment “*in terms of understanding policy implementation and providing leadership and strategic vision.*”¹; and that Mr Reeves’ appointment was based on merit.

Any damage to the public standing of any candidate for the position of CEO of the URLC, in particular Mr Reeves, as a result of this unnecessary and partisan enquiry is a matter for regret.

Finding 8. The Partisan Nature of the Select Committee

The Liberal and National Parties used their majority in the Legislative Council to establish this Select Committee and determine its composition and terms of reference for the sole purpose of meeting the direction of the then Leader of the Opposition, Denis Napthine to find someone – perhaps anyone- “guilty of circumventing a proper process”.

**Finding 9. The Partisan Nature of the Select Committee's
Deliberations**

As the extensive evidence before the Select Committee failed to demonstrate any inappropriate intervention by a Minister, the Liberal and National Party members of the Committee attempted to create the impression that the Government had something to hide by summoning the appearance of Ministerial Advisors and Ministers in the Lower House, in the knowledge that the proper division of privileges and prerogatives between the Houses would prevent this from occurring.

The Liberal and National Party members of the Committee further attempted the extraordinary and draconian use of coercive powers to obtain telephone records of Members of the Legislative Assembly, requiring the Speaker to intervene to protect the privilege of the Legislative Assembly.

The Weight of the Evidence

In reaching its conclusions, the Majority Report has ignored or discounted the following evidence:

Jim Reeves name is Put Forward as a Candidate

Mr Owen Lennie, Director, Urban and Regional Land Corporation:

“... we will accept nominations for the short list, as it were, from anywhere. And I think it is quite proper that the government and its agencies should be asked to put forward people.”

Minutes of Evidence 6 March 2002, 197

Mr Jack Reilly, Director, Urban and Regional Land Corporation:

“The CHAIRMAN (Mr LUCAS) – Did you see or hear any evidence of any government or political figures who were involved with the promotion of or support for Mr Reeves for this position?”

Mr REILLY – No.

The CHAIRMAN – Or any minister?

Mr REILLY – No.”

Minutes of Evidence 19 April 2002, 354-355

Professor Lyndsay Neilson, Secretary, Department of Infrastructure:

“Well, I have heard it is the minister’s idea, it is the Premier’s idea and it is all sorts of people’s idea. The fact is that I had known Reeves, I had known his work and I respected his work and his contribution. I felt that he was a good candidate, and I suggested that he be added to the list.”

Minutes of Evidence 15 March 2002, 297

Strength of Jim Reeves as a Candidate

Mr Frank Davis, Director, Urban and Regional Land Corporation:

“... it is not as if any of them were bad candidates, including Jim Reeves. I mean, he had strong credentials in many aspects. He was, in the view of the selection committee and the Board, weaker in some aspects. But it was not as if somebody met 90 per cent of the job and he met only 10... He was quite a good candidate.”

Minutes of Evidence 21 February 2002, 78

Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation:

“In our opinion, to use Frank’s term, there was not a bad candidate in our selection process.”

Minutes of Evidence 21 February 2002, 108

Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation:

“**Mr THEOPHANOUS** – You certainly would not say that either candidate was incapable of doing the job?”

Mr PETROVS – No, and I would like to go further and say that all the candidates interviewed in the final list of five out of five, I think it was, were all in one way or another capable of doing the job.”

Minutes of Evidence 21 February 2002, 113

Mr Terry Moran, Secretary, Department of Premier and Cabinet:

“**Mr HALLAM** – Mr Moran, at the conclusion of the second round of interviews, a document was prepared which concluded that “Mr James (Jim) Reeves is the outstanding candidate.”

Mr Moran – Yes.

Mr Hallam – Did you agree with that assessment?

Mr Moran – Yes.”

Minutes of Evidence 22 February 2002, 168

Mr Grant Hehir, Deputy Secretary, Dept. of Treasury and Finance:

“We agreed that Jim Reeves was clearly the strongest candidate in terms of understanding policy implementation and providing leadership and strategic vision, which we saw as an important aspect of the new managing director’s role.”

Minutes of Evidence 15 March 2002, 246

The Interview Panel does not meet to form advice to the Board prior to URLC Board meeting on 27 June

Professor Lyndsay Neilson, Secretary, Department of Infrastructure:

“ ‘The board nominated their preferred candidate without first seeking my views as a member of the selection committee.’, that is right. My expectation, made clear at the time we completed the round of interviews, was that the interview panel of which I was a part would meet, would discuss and compare the candidates and would come to a conclusion. That did not happen.”

Minutes of Evidence 15 March 2002, 286

Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation:

“**Mr JENNINGS** – Are you aware that Professor Neilson has indicated to the committee that it was up until 27 June that he believed that he was an equal contributor in the selection process that the board had embarked upon? ...

Mr PETROVS – I cannot recall reading that, but if that is what he said I accept that.

Mr JENNINGS – Yes, so in a sense the ructions that took place in the relationships actually pretty much stemmed from that time, from misunderstandings at the level of the board and the level of Professor Neilson’s involvement and his status in the selection process?

Mr PETROVS – I guess. Yes.”

Minutes of Evidence 1 May 2002, 390

Impact of Changes to the Act

Mr Grant Hehir, Deputy Secretary, Dept. of Treasury and Finance:

“**Mr THEOPHANOUS** - ... That does not sound to me as though the people signing this letter, of whom you are one, had much confidence that the board members understood what the government was requiring as a result of the legislative changes at all; is that a fair assessment?

Mr HEHIR - Yes.”

Minutes of Evidence 15 March 2002, 262

Poor quality of Advice led to serious concerns regarding the URLC Board decision of 27 June

Mr Owen Lennie, Director, Urban and Regional Land Corporation:

“ Mr JENNINGS – In retrospect would you be concerned that material that was presented to the Board on the 27th was perhaps not consistent with the professional appraisal you would expect for the board’s consideration?”

Mr LENNIE – Yes.”

Minutes of Evidence 6 March 2002, 188

Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation:

“Mr JENNINGS – Are there any members of the board who were involved in previous appointments to the chief executive position?”

Mr PETROVS – Yes. Jack Reilly, who is currently a board member, was involved in the appointment of the previous managing director, Des Glynn.

Mr JENNINGS – But of the members of the board, the two who were selected for the selection committee process had not been involved, had no prior involvement?”

Mr PETROVS – Not to my knowledge.”

Minutes of Evidence 21 February 2002, 104

Mr Terry Moran, Secretary, Department of Premier and Cabinet:

“I believe that in some respects the selection criteria upon which the board had relied were defective.”

Minutes of Evidence 22 February 2002, 162

Professor Lyndsay Neilson, Secretary, Department of Infrastructure:

“I have to say that I have probably never seen a more unprofessional report to a board in relation to an interview process.”

Minutes of Evidence 15 March 2002, 290

Consultation Under the Act

Mr Terry Moran, Secretary, Department of Premier and Cabinet:

“My view is that ministers should have quite a strong role where, in situations like this, there is a requirement for consultation, because at the end of the day this is a public entity and ultimately the minister is accountable both to the Parliament and to the people for how it all goes.”

Minutes of Evidence 22 February 2002, 164

Mr Owen Lennie, Director, Urban and Regional Land Corporation:

“There is nothing in the Act that prevents the ministers individually or together getting any advice they see fit, ... There is nothing in the Act that I can see that would prevent them getting any advice they liked, calling anyone they wanted and talking to anyone they wanted.”

Minutes of Evidence 6 March 2002, 187

Professor Lyndsay Neilson, Secretary, Department of Infrastructure:

“Simply putting something in front of ministers does not constitute consultation.”

Minutes of Evidence 15 March 2002, 309

Ms Angie Dickschen, Partner, Freehills:

Mr THEOPHANOUS - When you sent your letter to the Treasurer indicating that the appointment had taken place on 4 July, you did not even bother then to provide the appraisals to the Treasurer so that he could at least decide whether the board had made an appropriate decision, did you?

Ms DICKSCHEN - I do not believe the appraisals were attached.

Minutes of Evidence 21 February 2002, 90

Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation:

“There is that word “consultation” again. I guess everyone has their own interpretation of it.”

Minutes of Evidence 21 February 2002, 105

Introduction

The Select Committee on the Urban and Regional Land Corporation was established by the Liberal and National Parties to “enquire into and report upon any matters relating to the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.”

On 12 and 13 December 2001 the Select Committee wrote to a number of Government Departments, Agencies, Ministers and other individuals seeking documents relating to the Committee’s Terms of Reference.

The large number of documents provided in response to this request and subsequent hearings by the Select Committee involving 19 witnesses and some 424 pages of transcript have demonstrated that there was no predetermined candidate for the position and no inappropriate intervention in the process by the Government, any Minister, or any other person.

This is despite the strenuous efforts of the Liberal and National Party members of the Select Committee to skew the findings of the majority Select Committee Report in an attempt to meet what amounts to the real terms of reference which were revealed in an interview by the then Leader of the Opposition, Denis Napthine: to find someone – perhaps anyone- “guilty of circumventing a proper process”.

Reading the Majority Report

In reading the majority report the reader should bear in mind that the establishment of this Committee and its terms of references were a result of the Liberal and National Parties using their majority in the Upper House to achieve a partisan political objective. These same Parties consistently refused to allow the Upper House to conduct such Enquiries when they were in office.

The Selection Process

The appointment of a Chief Executive Officer is a key appointment for any organisation. It could indeed be considered the single most important decision of any Board, given the key role of a CEO in ensuring the implementation of its policies and direction. As such the process of appointment could be expected to be the subject of substantial consideration by the Board. In the case of the Urban and Regional Land Corporation the Board is also required to make the appointment following consultation with the Minister for Planning and the Treasurer.

In examining the process followed in the appointment of a new CEO of the Urban and Regional Land Corporation it is helpful to divide it into four chronological stages:

- the initial interview process agreed to by the URLC Board;
- the preparation of the selection sub-committees report to the Board and the Boards consideration of that report;
- the consultation by the URLC Board with the Minister for Planning and the Treasurer required by the Urban Land Corporation Act; and
- the further interviews initiated by the Secretary of the Department of Infrastructure to provide advice to the Minister for Planning and the Treasurer.

The Initial Process: Identifying and Interviewing Candidates

On 15 May 2001 the Chairman of the Urban and Regional Land Corporation, Mr Marek Petrovs, met with the Secretary of the Department of Infrastructure, Professor Lyndsay Neilson, to discuss the appointment of a new CEO.

Professor Neilson also raised at this meeting his being a member of the interview panel and Mr Petrovs agreed that it would be of value for Professor Neilson to participate. In his statement to the Select Committee Professor Neilson testified that:

“I wanted to be a member of the panel because I wanted to ensure that the candidates considered by ministers for the position would have the skills and capacity to assist the corporation to deliver the Government’s urban redevelopment policy agenda.”²

On 17th May 2001 the Board of the Urban and Regional Land Corporation met to formalise the commencement of the process of appointing a new Chief Executive Officer. At this meeting the Board established an interview panel comprised of Board Members Ms Angie Dickschen and Mr Frank Davis and Professor Neilson. The Board also agreed to the contracting of the Executive Search firm Heidrick and Struggles to assist with the identification and interviewing of candidates for the position of Chief Executive Officer. This followed a letter of 11th May to Heidrick and Struggles from Ms Dickschen saying that the URLC wished to engage them for this task.

A misunderstanding between Professor Neilson and Mr Petrovs occurred at their meeting of 15th May which, because it was unrecognised at the time, was to lead to the exclusion of Professor Neilson from the preparation of the selection sub-committee's report to the Board and contribute to the Board's failure to properly consult the Minister for Planning and Treasurer in making the decision to appoint a Chief Executive Officer.

Professor Neilson believed that Mr Petrovs had agreed to his being a member of the interview panel. In his statement to the Select Committee Professor Neilson testified that:

*“ I expected to be fully involved in the interviews and the final assessment of candidates before recommendations were made to the Board and the Ministers. Mr Petrovs agreed that I should be a member of the interview panel which was to be convened by the Board for the purpose of making the appointment. ”*³

and

*“On or around 12 June 2001 I received a letter from Rohan Carr of Heidrick and Struggles confirming my participation on the interview panel. ”*⁴

This is not an unreasonable belief for Professor Neilson to have formed. In his evidence to the Select Committee Mr Carr described Professor Neilson's role *“as part of the interview team ”*⁵.

Members of the URLC Board did not, as it was shown later however, share this view of his role. They believed Professor Neilson's status at the interviews was that of an observer. Mr Petrovs states in his evidence to the Select Committee that:

“Professor Neilson asked to be in attendance at the interviews. I saw no reason why he shouldn't be there. I conferred with my Board and they in turn thought it was probably a good idea.”⁶

Mr Davis' evidence to the Select Committee was that:

“It was not (Professor Neilson's) responsibility to make this recommendation; it was the Board's. He was invited so he would be aware of the candidates personally and that when the recommendation came forward he would be that much more fully informed”.⁷

This different understanding of Professor Neilson's status did not have any impact prior to the preparation by Ms Dickschen of her and Frank Davis' report and recommendations to the Board. However, Professor Neilson's exclusion from the preparation of the report and recommendations to the Board had profound implications later.

The First Round of Interviews

Professor Neilson had asked Mr Petrovs, in a meeting in early May, if Mr Jim Reeves' name could be added to the list of people to be screened by Heidrick and Struggles and interviewed. Professor Neilson told Mr Petrovs that he had observed Mr Reeves' work in urban redevelopment in Brisbane over 10 years and knew that he had a very good reputation in urban redevelopment. Mr Petrovs agreed to pass on Mr Reeves' name to Heidrick and Struggles.

Heidrick and Struggles had been provided with a list of 8 potential candidates, including Mr Reeves, by the URLC and their search process identified another 34 potential candidates. The candidate recommended by Ms Dickschen and Mr Davis, and agreed to by, the URLC board was a late entry into the process and Heidrick & Struggles were unable to give the Committee a clear indication of where his name came from.

This list of potential candidates was reduced to 6 for interview by the Selection Sub-Committee. Five of these candidates, including Mr Reeves and the Board's recommended candidate, were interviewed by the interview panel on 13th and 15th June 2001. The sixth candidate, an internal candidate, had not been scheduled for interview, as he was already well known to Ms Dickschen and Mr Davis. Professor Neilson requested that an interview be arranged with this candidate in order to complete the interview process. This was agreed to and Professor Neilson and Mr Davis interviewed this candidate on 19 June 2001.

To this point the process undertaken in identifying and interviewing candidates is an unexceptional one. It is only at the next stage, in the preparation of the report and recommendations of the selection sub-committee, that the narrowing of information to the URLC Board raises questions as to the appropriateness of the process adopted by the Board in finalising its position.

Interview Panel Member Frozen Out When it Mattered Most

At the conclusion of interviews on 15 June 2001, the last time, as it subsequently transpired, that the interview panel as a whole was to meet, Professor Neilson asked to see the draft interview report and raised his expectation that the panel would meet again to discuss the draft and agree on a final report.

Professor Neilson was not to see this draft interview report he had requested until 19 July 2001, more than three weeks after the URLC Board decision had been made.

Lack of Comprehensive Interview/Selection Report to Board

Ms Debbie Cozart of Heidrick and Struggles prepared a draft interview report dated 20 June 2001 and titled “Executive Search for Managing Director Candidate Summary Notes”. However, Ms Cozart had not attended any of the interviews. The draft interview report is approximately 1½ pages long and consists of two paragraphs of comment on each of four interviewees, including Mr Reeves.

This draft interview report provides the basis of a subsequent report to the URLC Board by the Selection sub-committee.

In her evidence to the Select Committee Ms Dickschen testified that she had prepared the report and consulted with Mr Davis prior to its presentation to the Board. In response to the proposition put to her at the Select Committee that the sub-committee report comprehensively deserted the analysis provided by Heidrick and Struggles, Ms Dickschen responded that

“The paper that I put to the Board was the selection committee’s view of the situation, and that was the recommendation that the selection

*committee was putting to the Board, based on a range of things that it had taken into account – Heidrick and Struggles, the interviews – and that is the basis of that report.”*⁸

Notwithstanding this contention, the candidate appraisals prepared by Heidrick and Struggles, setting out the strengths and weaknesses of each candidate were not reflected in the report presented to the Board, or provided separately to the Board by Ms Dickschen. In particular, none of the weaknesses of her recommended candidate, identified in the Heidrick and Struggles documentation, are referred to or even hinted at and none of the identified strengths of Mr Reeves are discussed.

The report by its selection sub-committee to the Board on the *Appointment of Managing Director* is 3½ pages long and consists of 1 page of introduction, a reworking of Ms Cozart’s *Candidate Summary Notes* and a discussion of the appropriate length of contract and salary package.

The reworked *Candidate Summary Notes* are worthy of some discussion. Under the heading *Interview Findings* the summary of two of the candidates is identical to Ms Cozart’s paper, other than for minor grammatical changes. The summary of a third candidate also has only some minor grammatical changes and the deletion of a positive concluding sentence in Ms Cozart’s paper that “His behaviour suggested he would be a good fit in the ULC environment.”

In the case of the summary concerning Mr Jim Reeves there are substantial changes. Positive references in Ms Cozart's paper are removed or played down and negative references are stressed. The rewritten paragraphs, now under the heading "Other Candidate" are introduced by:

*"One of the candidates interviewed has been suggested by some quarters as a possible candidate. However, after interview the committee is strongly of the view that the candidate is not appropriate"*⁹

and concluded with:

*"For the reasons above, and that he would be seen as a political appointment lacking in credibility to perform the role and for reasons of good corporate governance the committee does not recommend this candidate to the Board for the position."*¹⁰

Documentation provided to the Select Committee demonstrated that Mr Davis attempted to modify Ms Dickschen's draft report to the Board by the deletion of "*and that he would be seen as a political appointment lacking in credibility to perform the role and for reasons of good corporate governance*"¹¹, but his suggested change was not adopted by Ms Dickschen and the report went unaltered to the Board.

Mr Davis' assessment of Mr Reeves' candidature provided in his evidence to the Select Committee:

“ ...it is not as if any of them were bad candidates, including Jim Reeves. I mean, he had strong credentials in many aspects. He was, in the view of the selection committee and the Board, weaker in some aspects. But it was not as if somebody met 90 per cent of the job and he met only 10... He was quite a good candidate.”¹²

was also not reflected in Ms Dickschen's unchanged draft that reported to the Board *“the committee is strongly of the view that the candidate is not appropriate”*.¹³

Mr Davis' input into the finalisation of both the thrust and the detail of the sub-committees report appears to have been severely restricted to suggesting changes to Ms Dickschen which were not adopted. Mr Davis was also not advised by Ms Dickschen that, following the decision of the Board to appoint the recommended candidate, she had sought and obtained from Heidrick and Struggles a supplementary appraisal of the recommended candidate in the areas previously identified by them as weaknesses in that candidate.

Selection Sub-Committee Chairperson – Ms Angie Dickschen

The interventions by Ms Angie Dickschen as chair of the Selection Sub-Committee had the effect of ensuring that the candidacy of Mr Reeves was presented to the Board in the worst possible light and Ms Dickschen's preferred candidate was presented in the best possible light.

The use of the phrase “Other Candidate” to head the section of her report to the Board on Mr Reeves, when the sections on all other candidates are headed by their names, can only be seen as an attempt by Ms Dickschen to underplay the worth of Mr Reeves as a candidate in her report to the Board.

Ms Dickschen's failure to respond to Professor Neilson's request to see the draft interview report or to accommodate changes to the report suggested by Mr Davis exacerbated the problems of narrowness and non-contestability in the report presented to the Board.

Ms Dickschen sought a supplementary appraisal of her preferred candidate from Heidrick & Struggles in response to the identification of potential weaknesses in their initial appraisal without advising either Mr Davis or Professor Neilson of this request.

Ms Dickschen provided none of the assessment material on candidates prepared by Heidrick & Struggles, including their initial appraisal of Ms Dickschen's preferred candidate, to the Board.

Ms Dickschen's involvement in the "closing out" of Mr Reeves and other candidates prior to the end of consultation with Ministers (even in the Board's own terms of advising the Ministers of its decision and awaiting a response) was inappropriate.

We find it incongruous that Ms Dickschen insisted on retaining in her report the statement that Mr Reeves *would be seen as a political appointment lacking in credibility to perform the role* when she herself was a political appointment to the ULC Board by the Kennett Government. We note that Ms Dickschen kept this in the report despite Mr Davis' objection.

Ms Dickschen's consultation with her friend, the Shadow Minister for Planning Mr Ted Baillieu, prior to appearing before the Select Committee was inappropriate.

Inadequate Report to Board on 27 June

At this point in the process, immediately prior to the Board's consideration of its selection sub-committee report, the information available to the Board, the sources of that information, and the contestability of the information provided to the Board had been narrowed to such an extent that the Board was not in possession of sufficient information to enable it to make a fully informed decision on what is perhaps the single most important decision any Board can make.

- A process that had commenced with a list of 8 potential candidates provided by the URLC and a further 34 potential candidates identified by the contracted Executive Search firm had been reduced to two paragraphs each on four candidates and a recommendation.
- A process that had included the preparation of detailed appraisals by the search firm on each of the candidates to be interviewed had been reduced to a rewriting of a 1½ page summary of interviews which had itself been written by a person not present at the interviews.
- An interview process that had involved not only the two Board members on the interview panel but the Secretary of the Department of Infrastructure and a Senior Associate of the search firm contracted by the Board had concluded with no agreed assessment of the interviews by members of the interview panel and a report to the Board written for all practical purposes by only one member of that panel.

How did this happen? Why was information so narrowed and selectively used?

A partial explanation is the lack of experience in public sector appointments by members of the interview panel.

Only one member of the URLC Board, Mr Jack Reilly, had been involved in the previous appointment of the Urban Land Corporation CEO, and he was not a member of the interview panel. The Executive Search firm was also not experienced in public sector appointments.

The only member of the interview panel with extensive experience in public sector appointments, Professor Neilson, was excluded from the evaluation and reporting process because he was, in the view of the Board's selection sub-committee, simply an observer. Professor Neilson also brought to the interview panel substantial knowledge and experience of both urban development issues and the changes to the legislative framework of the URLC and the future impact of this on its operations.

A further explanation is the continued confusion by members of the URLC Board between the internal appointment of a CEO and the practical effect of the requirement of their governing Act that they make the appointment in consultation with the Minister for Planning and the Treasurer.

The title of the report of the selection sub-committee provides a further example of this confusion. It refers not to the appointment of a Chief Executive Officer, which is an appointment to be made by the URLC Board in consultation with Ministers, but to the appointment of Managing Director, a position that demands appointment to the Board, which is made by the Governor in Council.

It is absolutely clear from the evidence available to the Select Committee that the information and documentation available to it at its meeting of 27 June 2001 was insufficient to properly support a decision as significant as the appointment of its new CEO.

Failure to Consider Changes to the Act

On 27 June 2001, Professor Neilson attended a Board meeting, at which he made a presentation on the new charter and expanded functions of the URLC.

The Amendment Act gave the Corporation a new name and wider range of functions (in s 6(1) of the principal Act, as amended)

(1) The functions of URLC are--

(a) to purchase, consolidate, take on transfer or otherwise acquire land in metropolitan and regional areas for development for urban purposes; and

(b) to carry out development of land alone or in partnership or to enter into arrangements or agreements for the development of land; and

(c) to develop land in Victoria for residential and related purposes to provide a competitive market for land in Victoria; and

(d) to promote best practice in urban and community design and development, having regard to links to transport services and innovations in sustainable development; and

(e) to contribute to improvements in housing affordability in Victoria; and

(f) to provide consultancy services in relation to the development of land whether within or outside Victoria or outside Australia; and

(g) to carry out any other functions conferred on URLC by this Act.

In contrast, the functions of the ULC as originally enacted were of substantially more limited scope:

(1) The functions of ULC are--

(a) to develop residential land in Victoria; and

(b) to develop other land in Victoria where this is incidental to a residential development; and

(c) to provide consultancy services in relation to the development of land whether within or outside Victoria or outside Australia; and

(d) to carry out any other functions conferred on ULC by this Act.

Professor Neilson's presentation was as a result of his view, formed in conversations with Board members around and during the interview process, that individual Board members, and/or the Board as a whole, viewed the changes to the Act, and the consequent changes in the role and responsibilities of the URLC, as of a minor and cosmetic nature — that the role and functions of the URLC were essentially unchanged and that it was business as usual.

This perception of Board members is of importance to the inquiry of this Select Committee because the role and functions of the URLC, and changes to these roles and functions, go to the heart of the qualities required of a CEO.

The intention of the Government in amending the Act, and the effect of those changes, was to substantially broaden the focus from that of the old ULC – essentially a residential developer – to a new URLC with responsibilities and functions in urban development and redevelopment, the promotion of best practice in urban and community design and development and the improvement of housing affordability.

While many of the generic skills required of a CEO would be applicable in either case, different candidates bringing a differing mix of talents, experience and skills to the job would be more or less appropriate appointments depending on the intended focus and purpose of the organisation.

Clearly a background and experience in urban and community development would be more appropriate to a CEO of the URLC than was the case with the old ULC. Equally, a narrower specialisation in residential development would be a strength if the functions and purposes of the URLC had not been changed.

In addition, the task of redirecting an organisation's focus and practices from a previous charter to its new and expanded role also require a particular set of skills and talents in its CEO.

It is in this context that the failure of the URLC Board to consult with the Government in a timely and adequate fashion derailed the appointment process.

A failure to consult about the appointment need not necessarily be fatal to the process where all those meant to be party to the decision were in agreement about the nature and scope of the job. In this particular situation, where there was a fundamental difference as to the role expected to be carried out by the URLC, and, therefore, the role and key responsibilities of its CEO, the failure to consult as required by the Act meant that the essential issue – what were the required

characteristics and abilities of an appropriate CEO – was not canvassed, let alone agreed.

The narrowness of the information provided to the Board in Ms Dickschen's report, the limited sources of that information, and the lack of contestability of the information provided exacerbated this problem.

At no stage did the Board as whole have a real opportunity to measure the capacity and relative strengths and weaknesses of the candidate recommended in Ms Dickschen's report against either other candidates or against the functions and purposes of the URLC as set out in the amended Act.

The Board decides to Appoint, Before Consultation, Contrary to the Act

After Professor Neilson's departure from the Board meeting on 27th June, the Board discussed the interview report prepared by Ms Dickschen and adopted its recommendation. Professor Neilson was not informed that the Board would be considering the results of the interview process.

This failure to inform Professor Neilson was a further indication of the fundamental flaw in the selection process to that point - the mindset that the appointment of a new CEO and Managing Director was a decision for the Board alone and not, as required by the Act, to be made "*after consultation with the Minister and the Treasurer*".

This mindset is very clear in the identical letters of 4 July 2001 sent by Ms Dickschen as Deputy Chairman of the URLC to the Minister for Planning and the Treasurer which can only be read as an announcement to those Ministers of the Board's decision.

Headed *Appointment of CEO and Managing Director URLC*, the letter gives a brief description of the engagement of Heidrick and Struggles, the establishment of a sub-committee of the Board to interview and review the short listed candidates, and advises that the Board considered the matter at its meeting of 27 June 2001. The letters then goes on to state: "*The Board proposes to appoint (the Board's recommended candidate) as Chief Executive Officer. A copy of his Curriculum Vitae is attached.*" The letters then set out the proposed terms of appointment and remuneration package before noting that appointments to the Board (ie Managing Director as distinct from CEO) are to be made by the Governor in Council. The letter then baldly states that "*It is the understanding of the Board that the Chief Executive Officer is to be appointed to the Board*".

No assessment of the relative strengths or weaknesses of the recommended candidate is provided in the letters and no information at all on any of the other candidates is provided to the Ministers.

To this point, it is clear that there had been a breakdown in communication between the Board of the URLC and the government Departments – particularly the Department of Infrastructure.

- The interview panel, although including Professor Neilson as a member, had excluded him from the process of preparing a report for the Board.
- The interview report did not reflect the changes in the URLC's functions and priorities as a result of the 2001 amendments.
- The URLC Board members on the interview panel had approached the selection of a CEO with insufficient regard to the significant changes in the URLC's charter and the implications that could have for the position of CEO.
- The Board, although it received Professor Neilson at its meeting on 27 June 2001 and listened to his presentation on the URLC's new functions, did not tell Professor Neilson that it was about to consider the results of the interview process.
- When the Board did consider those results, it made a decision on the appointment and communicated that decision to the relevant Ministers as a *fait accompli* – pre-empting the Act's requirement for consultation.
- The view put to the Committee by some Board Members that Professor Neilson's membership of the interview panel constituted consultation with Ministers for the purposes of the Act is neither correct nor sustainable.

- It had also become apparent that the Board members of the interview panel had not taken up referee reports from any candidate other than their preferred candidate.

Back on Track: A Start to Consultation

Professor Neilson formed the view that that the 4 July letter from Ms Dickschen to Minister Thwaites presented the Ministers with a *fait accompli* by offering only one name and providing no information on the general field of candidates and therefore did not meet the requirement of the Act that the Ministers be consulted in the appointment.

Professor Neilson also formed the view that the Board incorrectly presumed that the CEO would automatically be appointed to the Board. He was further concerned that the letter indicated that the Board had effectively finalised the selection process when as a member of the interview panel he had not seen an interview report or been consulted about any recommendation to the Board.

Professor Neilson then rang Marek Petrovs to arrange a meeting with the Board members to inform Board members of his views. He also asked Mr Petrovs to provide him with a copy of the draft interview report.

On 19 July 2001 Professor Neilson met with three members of the Board, Marek Petrovs, Angie Dickschen and Frank Davis, and informed them that in his view the Board had failed to comply with the requirement for consultation and of his other concerns.

It was at this meeting that the different understanding of Professor Neilson and the Board as to his status on the interview panel first became clear. It was also at this meeting that Professor Neilson was first given a copy of the candidate summary notes prepared by Ms Cozart. Professor Neilson advised the Board members that in his view these summary notes were incomplete because it did not cover all candidates, failed to provide sufficient context of the candidates measured against the requirements of the position and was not a fair representation of Mr Reeve's performance at the interview. Professor Neilson

advised the Board members that he would provide Rohan Carr with his suggested changes to the paper.

Professor Neilson's suggestions were subsequently circulated to the other members of the interview panel and incorporated into the draft interview report.

The Board members defended the appointment process as having provided adequate consultation for the purposes of the Act and the failure to provide Professor Neilson with a copy of the draft interview report prior to the Board's decision given their view that he was only an observer to a process of the Board.

The meeting nonetheless agreed to Professor Neilson's advice to Mr Petrovs that a further letter should be written to the Minister providing details of all the candidates interviewed so as to involve the Minister in the consultation process.

The drafting of this further letter was the subject of discussion between Mr Petrovs and an officer of the Department of Infrastructure and was sent by Mr Petrovs to Minister Thwaites on 30 July, for the first time providing the Minister with a copy of the Cozart paper which formed the basis of the interview report.

Professor Neilson was still unaware at the conclusion of this meeting of the existence of the report prepared by Ms Dickschen and presented to the Board at its meeting on 27th June.

Following his meeting with the Board Members Professor Neilson reviewed the draft interview report prepared by Ms Cozart, reconfirmed his view that the interview report (written without his input even though he had participated in the interviews) did not fairly reflect the interviews and provided his suggested changes to Rohan Carr of Heidrick and Struggles.

Given Professor Neilson's view of the merits of the draft interview report, his concern that the Board had not adjusted to the broader functions introduced by the 2001 amendments and the fact that the Board had initially presented the decision to the Ministers as a *fait accompli*, Professor Neilson met with the Secretary to the Department of Premier and Cabinet, Mr Terry Moran on the 20th July to seek his advice.

Professor Neilson and Mr Moran discussed Professor Neilson's concerns and ways of ensuring that the changed functions of the URLC were taken into account in selecting its CEO and ensuring that effective advice was given to the Treasurer and the Minister for Planning.

Professor Neilson and Mr Moran discussed the best means of achieving this and the option of re-interviewing three candidates – the Board's preferred candidate, the strongest internal candidate and Mr Reeves – by a selection panel made up of Professor Neilson, Mr Moran and the Acting Secretary of the Department of Treasury and Finance, was canvassed.

Professor Neilson Advises His Minister

On August 3rd Professor Neilson prepared a brief to the Minister for Planning that reflected the result of his discussion with Mr Moran. Professor Neilson recommended to the Minister that a further round of interviews be conducted by Professor Neilson, Secretary of the Department of Infrastructure, Mr Moran, Secretary of the Department of Premier and Cabinet, and Mr Grant Hehir, then Acting Secretary of the Department of Treasury and Finance. Professor Neilson recommended that the three leading candidates be re-interviewed.

Minister Thwaites approved Professor Neilson's recommended course of action but asked that Mr Petrovs as the Chair of the URLC be included on the interview panel.

This request by the Minister is the only example of any involvement in the whole selection process by a Minister that was not explicitly based on the advice of their Departmental Secretary. It is also a clear example of the Minister's concern to ensure that a full and proper process, which included the Board, was undertaken in the appointment of a new CEO to the URLC.

On 7 August, one week after Minister Thwaites received the letter from Mr Petrovs, Professor Neilson advised the Board of the second round of interviews and invited Mr Petrovs to fully participate in accordance with Minister Thwaites request.

The Second Round Interviews

The three departmental heads interviewed the three leading candidates – the Board's recommended candidate, an internal URLC candidate and Mr Reeves on 17th August 2001. Mr Petrovs did not fully participate in these interviews as a result of the decision of the URLC Board that he should participate only as an observer. Ms Jenny Singleton, then Director of Human Resources, Department of Infrastructure, was also present at the interviews as a note taker.

Following the interviews, the Department Secretaries discussed the relative merits of the three candidates. All were considered to be capable of meeting all or part of the requirements of the job.

The three Department Secretaries were agreed that Reeves was clearly the strongest candidate in terms of understanding policy directions in urban renewal and providing leadership and strategic vision to the URLC, which were seen as important aspects of the new CEO's role. However, Mr Hehir expressed his concern at Mr Reeves' lack of commercial experience.

“We agreed that Jim Reeves was clearly the strongest candidate in terms of understanding policy implementation and providing leadership and strategic vision, which we saw as an important aspect of the new managing director's role. However, I expressed concerns about Jim Reeves' lack of commercial experience.”¹⁴

The Department Secretaries were also agreed that the Board's recommended candidate was a credible candidate but more suited to a stable land development business than an agency going through a significant change of focus, and that the internal candidate was also a strong candidate. It was agreed that it would be in the URLC's interests if his services could be retained.

The nature of this discussion is consistent with the evidence given by Mr Davis and Mr Petrovs to the Committee that all of the candidates short listed by the Board were capable of doing the job.

The key determinants in finally deciding amongst candidates for a position such as the Chief Executive Officer of an organisation are the relative weight given to the various requirements of the job and the relative strengths and weaknesses of the candidates in respect to each of those requirements.

Following these interviews and discussion, a normal and uncontroversial process in finalising the interview report – a process Professor Neilson had expected to occur following the first round of interviews – took place. Ms Singleton prepared a draft interview report based on the notes she had taken and this draft report was circulated to the members of the interview panel for comment.

Mr Hehir responded to the draft report by indicating his support for the recommendation that Mr Reeves be appointed but proposing that the report be amended to address his concern at Mr Reeves relative inexperience in commercial issues by recommending the creation of a new position of chief operating officer leaving Reeves to concentrate on the strategic aspects of the CEO's role.

Mr Moran and Professor Neilson agreed to Mr Hehir's proposal. Mr Moran expressed to the Committee his view that this recommendation was consistent with his view that many organisations required the strategic direction setting role of a CEO to be complemented by a chief operating officer position, and not only with the immediate circumstances of the URLC as it entered a period of major change. Mr Moran said that:

“The second alternative is somebody who makes sure that that established business is running okay while getting on with taking the

organisation in new directions. ... but what I am saying is that I genuinely believed that what the URLC needed was new directions in order to sustain the argument that as an organisation it should remain within government - and secondly, to deliver on what was government policy, anyway - and that candidate A was not the person to do that and Jim Reeves was.

In my experience ... since I have arrived in Victoria, one of the debates I have had with a number of secretaries of departments, as an example, and I do not wish to name which, is that given the structure of government ... which I think is a sound structure of government, where there were eight departments, now nine, the range of responsibilities in most of those departments - mine not being amongst them - is so great that in addition to a secretary fulfilling the traditional CEO role - I am sure the chairman would have some sense of what I am saying here - the CEO is the strategic leader, the person who finds the new directions, the person who manages the external environment and who makes sure that the stakeholders are happy - in this case, government.

The traditional CEO role performed by the secretary, in some cases, I thought, needed to be complemented by a chief operating officer-type within the department. So when I came down to look at this I think my reaction was: given what I am told by Professor Neilson and having read about it - and by others I suppose - that it was intended that the URLC go in new directions, such as urban renewal, social housing and so forth, you are not likely to get a person who can really give energy and drive to that and chart new directions unless you also have a person who can take care of the business as it is.

That was at the basis of my thinking. It was entirely mine. It had a history of my relationships with secretaries in other contexts. I still stand by it."¹⁵

The Secretaries' Report

The final report was agreed to and signed by the three Departmental Secretaries on the 18th and 19th of September, 2001.

The report, signed by Mr Moran, Mr Hehir and Professor Neilson, recommended that:

It is the opinion of the panel that Mr James (Jim) Reeves is the outstanding candidate for the Managing Director, Urban and Regional Land Corporation.

It is further suggested that the Minister advise the URLC Board that the Government's view is that Mr Reeves contribution would be complemented by an expansion of the role of (the internal URLC candidate) as an Operational Manager and that he participates in Board decision making. This would enable a continuing focus on the existing core land development business while re-alignment to effect the Government's policy orientation took place.¹⁶

Minister Replies to Board

Following his receipt of the report, and acting on the advice of his Departmental Secretary, The Minister for Planning wrote to the Chairman of the URLC on the 20th September 2001 advising that it was the *firm view of both myself and the Treasurer that the URLC Board should now consider the appointment of Mr Jim Reeves as Managing Director, URLC, to provide the necessary change management, experience in large, complex urban renewal activities, and leadership in responding to the URLC's new role and functions.*¹⁷

In a letter of 26th September, Mr Petrovs responded to the Minister that on the basis of this view of the Minister for Planning and Treasurer, being the shareholders of the URLC, the Board had resolved that Mr Reeves be appointed as Managing Director. The Minister for Planning acknowledged this letter in a letter of 4th October.

One Last Mistake

This letter represented the formal conclusion to the process of selecting a new CEO for the Urban and Regional Land Corporation. On 11 October 2001 Mr Petrovs wrote to Mr Reeves offering him the position of Managing Director with the URLC. The letter also offered a three-year term conditional upon the appointment being made by the Governor in Council and the same salary package as that of the outgoing Managing Director.

Prior to making this offer, the URLC should have referred the salary package to the Government Sector Executive Remuneration Panel (GSERP) for approval as required by Government policy.

The URLC did not refer the proposed salary package to the GSERP. Given that it was the same salary package as had been approved for the previous CEO, it was a reasonable assumption that this was the appropriate rate.

The failure of the URLC to meet this requirement is, nonetheless, a further example of a general lack of attention to detail and process in the URLC's approach to the selection and appointment of a new CEO – a lack of attention to detail and process, that was the root cause for the controversy which has ultimately surrounded this appointment process.

Overview: Not a Conspiracy, Just a

The appointment process had not been as smooth or as simple as might have been hoped at the outset. Its unusual aspects arose, however, not from any attempt by the Government to impose a pre-determined outcome or by any inappropriate intervention by the Government or any of its Ministers but by a failure by the Board to ensure timely consultation with Ministers as required by its governing Act.

This failure was compounded by the different understanding of the Board and Professor Neilson as to his status on the interview panel and a substantially different understanding by the Board and the Government of the import of the amendments to the URLC's governing Act, the functions of the URLC and the consequent changes required in the strategic directions and operations of the URLC.

The Conspiracy Spin ...

Members of the Liberal and National Parties have made much play during the course of the Select Committee of claims that the decision had been pre-determined by the Government.

This conspiracy theory developed by the Opposition parties quickly falls apart when the evidence is examined.

Professor Neilson was extremely clear in his evidence to the Committee that he had proposed Mr Reeves as a candidate to be considered to Mr Petrovs on the basis of his previous knowledge of Mr Reeves' involvement in urban planning and renewal issues. Mr Petrovs evidence to the Committee confirmed that Professor Neilson suggested to him that Mr Reeves be included as a candidate. In

response to the leading suggestion put to him by Mr Lucas that Mr Reeves was the Government's "preferred candidate", Mr Petrovs said in evidence that

*Certainly government's candidate was mentioned whether the word 'preferred' was used or not, but I got the clear impression that it was somebody the government would like to be considered quite seriously. The word preferred may not be exactly accurate.*¹⁸

So the first step in the Oppositions conspiracy theory is to characterise the request by the Departmental Secretary that a candidate "*be considered quite seriously*" as being an attempt to determine the final decision.

Unfortunately for the Opposition members, they have been unable to make out any logical case why the Government, or a Government Department, or the URLC Board or individual Board members, should not propose candidates to be considered – even "considered quite seriously" - in the selection process.

As it transpired, Mr Reeves was one of 6 candidates finally recommended for interview by the Search Consultants employed by the Board.

The conspiracy theorists key witness was Mr Desmond Glynn, the former Managing Director of the URLC and ex-Treasurer Alan Stockdale's golfing partner. In response to questioning from Mr Hallam, Mr Glynn reaffirmed his comments to the *Herald Sun* that "*I did not seek re-election because it was already known back in May that the government wanted to put in their own man. Everyone knew it was a done deal and the whole recruitment process was a sham*".¹⁹

Mr Glynn also told the Committee that "one of his general managers" had told him that Mr Bracks had offered the position to Mr Reeves and that Mr Reeves was flown down from Brisbane to meet the Chairman of the URLC Board.

However, none of these claims stand up to scrutiny.

The reason Mr Glynn did not seek re-appointment is placed in a different light by evidence by members of the Board. Mr Petrovs gave evidence to the Committee that

*“there was a view at board level, and it was my view, that it was time for a change”.*²⁰

Another Board Member, Mr Frank Davis said in his evidence that

*“I think there was a growing view – I was starting to form a view that we might have needed a bit of fresh blood at the top and that we should at least look at other candidates ...he was not able to build the bridges with the new government that he had been able to build with the old one ... we needed somebody who could do that a little better.”*²¹

The general manager referred to in Mr Glynn’s evidence flatly denied to the Committee ever having told Mr Glynn that the Premier had offered Mr Reeves the position of Managing Director. The General Manager told the Committee that he had not even heard of Mr Reeves until some time after Mr Glynn had announced his intention not to seek reappointment.²²

Mr Petrovs equally denied ever having met Mr Reeves prior to the first round of interviews.²³

Given this comprehensive refutation of Mr Glynn’s evidence, all that is left is the fact that within the same approximate time frame that Mr Reeves name was provided to the Chairman of the URLC as a candidate to be considered, rumours were circulating within the URLC, and to some extent within those sections of

the development community that had dealings with the URLC, that the Government had a preferred candidate in Mr Reeves for the position of CEO of the URLC.

This type of rumour and speculation is a common occurrence in any organisation- government or private – in the lead up to a significant appointment such as a Chief Executive Officer.

Diversions and Sideshows

The response of the Liberal and National Party members of the Select Committee to the absence of any evidence of any inappropriate intervention by any Minister and the clear evidence presented to the Committee that the candidate to be appointed was not pre-determined by the Government, any Minister, or any other person, has been to attempt to manufacture conflict between the Select Committee and the Government.

The Partisan Nature of the Select Committee's Deliberations

The Liberal and National Party members of the Select Committee used their numbers on the Committee to make demands on the Legislative Assembly and the Executive that were unable to be met when applying normal protocols of privileges and prerogatives.

The Liberal and National Party members of the Select Committee then argued that the non-compliance with their unreasonable requests was evidence of something to hide.

In response to the Committee's request for documents from Lower House Ministers, documents requested by the Committee were provided on 18 January 2002. One document was withheld in its entirety and personal information was withheld from four other documents. The Attorney General wrote to the Select Committee requesting a meeting to discuss how this withheld material would be used and treated by the Committee. The Committee refused this request and instead issued summonses to the Premier, Treasurer and Minister for Planning to produce the documents.

As the Attorney General had advised the Select Committee, a committee of the Legislative Council has no power to summons members of the Legislative Assembly.

Nonetheless the Liberal and National Party members of the Committee continued to refuse repeated requests by the Attorney General to meet with him to discuss the release of the entirety of the five documents to the Committee, preferring to cloud the fact that the voluminous documentation provided to the Committee did not reveal any inappropriate action by the Government or any Ministers.

The same tactic was used by the Liberal and National Party members of the Committee in issuing summonses to a number of Ministerial Advisors.

The Select Committee's action was in breach of the Victorian Parliament's Committees Manual, which provides for summonses to be issued only as a last resort and after a request to appear has been refused or not responded to.

As outlined in Appendix G of the Committee's First Interim Report, these summonses were also in breach of the customs and procedures acknowledged in all Australian Parliaments concerning the appearance of Ministerial Advisors before Parliamentary Committees.

Finally, even if advisers had appeared before the Select Committee, under the *Guidelines on the Provision of Information and Evidence to Victorian Parliamentary Committees* Ministerial advisers, engaged to advise and assist in a political and not executive capacity, would be obliged to claim privilege and immunity.

All three of these points were, or should have been, known by the Liberal and National Party members of the Select Committee, prior to their decision to summons the appearance of Ministerial Advisors. The only possible reason for the pursuit of this provocative and unreasonable path of action was to create conflict and a false impression that the Government had something to hide.

Fishing for Phone Records

In an extraordinary step, and continuing their partisan strategy of placing demands on the Legislative Assembly which ignored normal protocols of privileges and prerogatives, the Liberal and National Party members of the Select Committee resolved to summons from the Telstra Corporation records of incoming and outgoing telephone calls between the Offices of the Premier, Treasurer and Minister for Planning, the Departments of Premier and Cabinet, Treasury and Finance, and Infrastructure and the City of Brisbane and Mr Jim Reeves.

In the absence of any evidence of inappropriate action by the Government, this attempt to use such extraordinarily coercive and invasive powers for a fishing expedition required the Speaker of the Legislative Assembly to respond to protect the privilege of Members of the Legislative Assembly by advising Telstra of the lack of power of the Select Committee to require the production of such records.

Cost and Disruption

In any event, Telstra notified the Committee of the difficulty and extraordinary cost (over \$1million and six months work) to attempt to provide this information. Telstra subsequently responded to a further and more specific request from the Committee that phone numbers could not be traced beyond the PABX exchange.

Again, the only possible reason for this extraordinary course of action was to create conflict and a false impression that the Government had something to hide.

Refusal of Select Committee to Examine Previous Appointment Processes.

To meet the terms of reference for the inquiry, a genuine attempt to identify and examine any deficiencies in the selection process for the CEO of the URLC could also have been expected to have compared the interview and appointment process with previous practice. The Liberal and National Party members of the Select Committee have, however, used their numbers to prevent any comparison of the selection process used in the appointment of a CEO of the Urban and Regional Land Corporation with the process adopted in the 1997 appointment of the previous CEO of the Urban Land Corporation, and the subsequent 1998 appointment of the CEO as Managing Director by the Kennett Government.

Specifically, the Liberal and National Party members of the Select Committee refused to allow the Select Committee to seek information from the former Premier, Mr Jeff Kennett, the former Treasurer, Mr Alan Stockdale, or the former Minister for Planning, Mr Robert Maclellan as to their involvement in the 1997 appointment process or to request their appearance before the Select Committee.

It is worth noting that the Committee would have the power to invite (and summons) Mr Kennett and Mr Stockdale without impinging on the privilege of the Legislative Assembly. The Legislative Assembly, would, however, have to grant leave in the case of Mr Maclellan.

Conclusion

This Select Committee was established for narrow, partisan party political purposes.

The Liberal and National Party members of the Select Committee have since its inception been pursuing some evidence to meet the former Leader of the Opposition's direction that somebody be found guilty of an improper intervention in the process of appointing a CEO for the Urban and Regional Land Corporation.

They have failed to meet this direction and have instead produced a biased report that has failed to objectively assess the clear weight of evidence presented to the Committee. The Majority Report is a document designed to disguise this failure and fulfil the political agenda of the Liberal and National Parties.

It is in this context that a controversial \$100,000 consultancy given, without normal tendering processes, by the Kennett Government to the Chairman of the Select Committee, Mr Neil Lucas, should be noted. The then Minister for Local Government, Mr Roger Hallam, who approved this deal, is the Deputy Chairman of the Committee.

There was no inappropriate intervention by any Minister in the process of selecting a new CEO for the Urban and Regional Land Corporation (URLC).

Evidence presented to the Select Committee has revealed an extraordinarily narrow level of documentation provided to URLC Board members by their selection sub-committee to assist them in making what is perhaps the single most important decision the URLC Board was likely to make.

Evidence to the Select Committee also makes it clear that the full impact of the changes to their governing Act and new functions of the URLC were not reflected in any substantive way by the Board and its selection sub-committee in their establishment of the candidate selection process, the interviews and surrounding assessments or the initial decision of the Board.

The URLC Board is required to appoint its CEO “after consultation with the Minister and the Treasurer” by clause 6(1) of Schedule 1 of the Urban and Regional Land Corporation Act.

The evidence before the Select Committee clearly demonstrated that the Board failed to adequately meet this requirement to consult with the Minister for Planning and the Treasurer prior to appointing a new CEO, presenting their decision as a *fait accompli* and not provide information to Ministers that would support the Board's decision.

This failure by the Board to adequately address the consultation requirements of the Urban and Regional Land Corporation Act was rectified by the actions of the Secretary of the Department of Infrastructure, with the support and assistance of the Secretary of the Department of Premier and Cabinet and the then Acting Secretary of the Department of Treasury and Finance, in arranging a second round of interviews to provide effective advice to Ministers to allow them to reach an informed view on the appointment.

This second round of interviews also enabled the substantial changes to the role and functions of the URLC and the consequent changes in the mix and skills required of its CEO to be properly taken into account.

This Enquiry has highlighted the importance of understanding the various roles, functions, powers and responsibilities of Ministers and Boards of Government owned bodies.

Victoria has been denied a competent and dynamic CEO of the URLC in Mr Jim Reeves because of the political opportunism of the Liberal and National Parties and their concentration on his “Labor background” rather than the skills and talents he would have brought to the job.

We draw attention to the closing paragraphs of Professor Neilson’s statement to the Select Committee. They are, in our view, not only correct but a clear demonstration of an approach that is very much aware of, and committed to, the proper discharge of the responsibilities and obligations of both Ministers and Public Servants in the performance of their duties:

“The corporation is established as a public authority by the Urban and Regional Land Corporation Act 1997. It is not independent of the government. It is, for example, subject to express directions by the Treasurer under section 13 of the act. The development of the corporation's corporate plan under section 18 of the act closely involves the Treasurer and the Minister for Planning. Under section 28 of the act the Minister for Planning or the Treasurer is entitled to require the board to provide them with such information as they nominate. Administrative arrangements designate the Minister for Planning as the minister responsible for administering the act.

Ministers are responsible for matters related to or arising from acts under their administration. Hence the Minister for Planning has a particular responsibility for ensuring the good governance and good management of the corporation. Custom and practice leads to a significant measure of direct engagement in key appointments. In such circumstances, as Terry Moran pointed out to this inquiry,

'ministers are entitled to have a say in those people who head organisations within their area of ministerial responsibility'.

There is no sense in which ministers can stand aside or be put aside in the interests of an independent board from their own statutory and governance obligations, including responsibility for participation in senior appointments such as that of the CEO of the corporation. To do so would deny their responsibility for the performance of bodies under their administration.

Secretaries are required to advise ministers about the effective and proper performance of their statutory obligations under any legislation for which a minister is responsible. Secretaries necessarily take into account the portfolio-wide and indeed cross-governmental implications of action under any single piece of legislation, and the issues arising out of the appointment of a CEO for the corporation need to be placed in that wider policy and institutional context.”²⁴

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- 1 Mr Grant Hehir, Deputy Secretary, Department of Treasury and Finance.
Minutes of Evidence 15 March 2002, 246
- 2 Professor Lyndsay Nelson, Secretary, Department of Infrastructure.
Minutes of Evidence 15 March 2002, 280
- 3 Professor Lyndsay Nelson, Secretary, Department of Infrastructure.
Minutes of Evidence 15 March 2002, 280
- 4 Professor Lyndsay Nelson, Secretary, Department of Infrastructure.
Minutes of Evidence 15 March 2002, 280
- 5 Mr Rohan Carr, Senior Associate, Heidrick and Struggles.
Minutes of Evidence 20 February 2002, 53
- 6 Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 108
- 7 Mr Frank Davis, Director, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 73
- 8 Ms Angie Dickschen, Partner, Freehills
Minutes of Evidence 21 February 2002, 96
- 9 Selection Sub-Committee Report to URLC Board Meeting of 27 June 2001
- 10 Selection Sub-Committee Report to URLC Board Meeting of 27 June 2001
- 11 *Minutes of Evidence* 21 February 2002, 72
- 12 Mr Frank Davis, Director, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 78
- 13 Selection Sub-Committee Report to URLC Board Meeting of 27 June 2001
- 14 Mr Grant Hehir, Deputy Secretary, Department of Treasury and Finance.
Minutes of Evidence 15 March, 2002, 246
- 15 Mr Terry Moran, Secretary, Department of Premier and Cabinet.
Minutes of Evidence 22 February, 2002, 170
- 16 Interview Report, Managing Director for URLC, 13 September 2001
- 17 Minister for Planning letter to Chairman, URLC. 20 September 2001
- 18 Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 111

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- 19 Mr Desmond Glynn. *Minutes of Evidence* 20 February 2002, 20
- 20 Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 111
- 21 Mr Frank Davis, Director, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 78-79
- 22 *Minutes of Evidence* 22 February 2002, 150
- 23 Mr Marek Petrovs, Chairman, Urban and Regional Land Corporation
Minutes of Evidence 21 February 2002, 124
- 24 Professor Lyndsay Nelson, Secretary, Department of Infrastructure.
Minutes of Evidence 15 March 2002, 284