



*Hellenic Australian Chamber of Commerce
and Industry Western Australia (Inc)*

The Hon Wayne Martin
Chief Justice of Western Australia

25 February 2008
University Club, Crawley



I would like to commence this evening by acknowledging the traditional owners of these lands, the Nyoongar people, and by paying my respects to their Elders past and present.

It is a great honour and privilege to have been asked to address this dinner organised by the Hellenic Australian Chamber of Commerce and Industry in Western Australia. There are a number of reasons for this.

The first is that I am a self-confessed Grecophile. Perhaps this stems from my early years at North Perth Primary School in the 50s, when many of my classmates were of Greek origin (and a lot of the rest were Italian!).

I have also been lucky enough to travel to Greece on five separate occasions, and have travelled extensively throughout that beautiful country, and have had the opportunity to meet many of its friendly and hospitable people. In 1988, I took a year's sabbatical, and spent almost 3 months of that year in Greece - quite a lot of it in a charming little white-washed house overlooking the Aegean in the village of Ermioni, which is on the Peloponnese - not far from the island of Hydra. The Peloponnese is in fact one of my favourite areas of Greece. The scenery is magnificent; the history, which includes Greek, Roman and Venetian periods is stimulating; the beaches are beautiful, and the restaurants amazing. This is not to say that the stunning scenery of the northern parts of Greece, including Delphi and Meteora do not also have their allure.



And who could fail to mention the islands. I have visited many. My favourites are Corfu, Hydra, Paros, Sifnos, Mykonos, Santorini, Crete and Rhodes.

Regrettably, I have not yet had the opportunity of visiting the Greek island which is the greatest significance to our Western Australian Greek community which is, of course, the island of Castellorizo. Which brings me conveniently to the second reason why it is a great privilege to be invited to address you tonight, and that is the significance of the Greek community in the development of Western Australia. At the risk of telling you things you already know, I will touch briefly upon that history.

Dr John Yiannakis makes the point that Greek sailors aboard British or French vessels visited Western Australia very early following colonial settlement, and it is quite possible that some remained behind. However, the first recorded permanent arrival is that of Athanasios Augoustis, anglicised as Arthur Auguste, which also happens to be the name of a senior legal practitioner who has been a friend of mine for many years. The first Arthur Auguste was from Castellorizo. He stepped ashore at Broome, having travelled from Egypt, in either 1890 or 1891. He sponsored cousins to join him, initiating a process which continued until well after World War II, by which time the island of Castellorizo had been substantially depopulated. However, Castellorizo's loss was Western Australia's gain.



During the 1890s, many Greeks were lured to the Golden West as a result of our gold rush. In the census of 1901, 148 persons nominated Greece as their place of origin.

Dr Yiannakis reports that by 1914, the number of Castellorizians who had followed Arthur Auguste to Perth totalled about 120, with others scattered elsewhere throughout the State. 1914 was, of course, also the year in which World War I started. Unfortunately, Greece backed the wrong side in that war which caused some difficulties for the Western Australian Greek community around that time. A census list of Greek-born adult males compiled by the federal police in June 1916 recorded 267 persons. The list provides some insight into the occupations carried on, which predominantly featured general labouring, fruit shops and work in restaurants.

However, over time, these traditional areas of work have changed significantly, to the point where "Con the Fruiterer" is something of an anachronism. Greek migrants have been extremely good at integrating into the Australian community. In Western Australia, people of Greek ethnic origin are over-represented in professions such as medicine, the law, academe and education. And their contribution to business and commerce has been profound, through families like the Kailises and the Michaels.



But returning to the first world war, 66% of the males listed on the federal police list were Castellorizian. By 1933, that percentage had risen to about 89% in Perth.

Generally speaking, the history of Greek migration to Western Australia has been a history of great success, and outstanding contribution to the development of our great State. However, it has not been without its occasional hiccup. Perhaps the most significant was the riots in Kalgoorlie in December 1916. The riots were triggered by inflammatory reports in the Kalgoorlie press, blaming the King of Greece for the deaths of British and French soldiers at the hands of Greek troupes (*Kalgoorlie Miner*, 8 December 1916). Some Kalgoorlie residents, led by returned soldiers, damaged and looted more than 20 Greek-run businesses in Kalgoorlie. Greek shops were also destroyed in Boulder. More than 40 arrests were made. The riots were followed by a union ban on "enemy subjects" working in the mines, which put many Greek-born miners in Kalgoorlie out of work.

Fortunately, those dark days are well behind us. The Governor of Western Australia is a Western Australian of Greek origin. His appointment was, and remains, immensely popular. His brother was Lord Mayor of our city. Another brother has been the leader of the medical profession in our State. Western Australians of Greek origin have become an integral part of the fabric of our community and have made an enormous contribution to the development of our great State. That is why



it is such a pleasure to be given an opportunity to acknowledge that contribution on an occasion like this.

Another reason it is a particular privilege to address this evening's function is that we are honouring successful students from 2007. Our State is experiencing a boom of proportions which I have never seen. The pressures created by the boom demand energetic, educated and enthusiastic leaders of the future, who can respond to the many challenges created by the boom. Tonight we have the opportunity to acknowledge and congratulate some of those who will rise to meet this challenge in the years ahead.

But this is after all a dinner convened by a Chamber of Commerce and Industry, and so I would now like to move to my other theme this evening, which concerns the moral and ethical responsibilities which go with positions of leadership in the business community.

The HIH Royal Commission

I gained direct experience of the profound importance of that notion in the course of my duties as Counsel Assisting the Royal Commission into the collapse of the HIH Group of Companies. The collapse of that Group is generally thought to have been the largest collapse, in dollar terms, in Australia to date. The collapse occurred at about the same time as a number of other major collapses which had profound ramifications for



Australian consumers, including Harris Scarffe, Ansett and One-Tel. This rash of unexpected major collapses at a time of apparent economic prosperity took many by surprise, and properly focused community attention on the soundness of our mechanisms and structures of corporate governance.

HIH was Australia's second largest general insurer. The ramifications of its collapse were extensive. Almost nobody in the community was immune to its consequences. Because it dominated the market in the provision of builders' warranty insurance, many building projects around the country were stopped overnight and new projects were delayed while other insurance was obtained. Many were put out of work in the building industry and in the many industries that supply that industry. Some of those stoppages endured for up to two months. People who had been seriously injured and who depended on insurance payments for their very survival were thrown on to the meagre benefits provided by social welfare. Even people who had no direct dealings with HIH were seriously disadvantaged - one example being the farmers in the wheat belt of this State whose claim against the local Shire for damages arising from a fire which spread from the local tip went unresolved for a very long time, largely because the Shire, in common with many local government bodies around the country, was insured by HIH.

The question which jumped to a lot of people's lips was "how could this have happened?" HIH had all the apparent trappings of success - large



and opulent corporate offices in every State, a fabulous programme of entertainment, gifts, donations and corporate sponsorship. Its CEO was feted as one of Australia's most successful self-made men. Perhaps even more significant than these superficial indicators, was the fact that it had a Board of Directors composed of highly regarded, senior and experienced representatives of the business, legal and accounting communities. It was audited by a highly respected accounting firm - one of the then big five, although its later demise has left us with the big four. The provisions it made for future claims liabilities were the subject of advice from a number of actuaries, and perhaps most significantly of all, it operated in an industry which is subject to the most intensive form of prudential regulation available in Australia, by a recently created and apparently well credentialed regulator - namely, APPRA. So what went wrong? Why did all the mechanisms that are supposed to reduce the risk of this kind of collapse apparently fail?

Now of course Justice Owen has delivered a lengthy three-volume report answering that question in great detail. And it would try your attention after a nice dinner if I were to try to cover in any meaningful way the broad ground which he has covered in that report.

But the main reasons for the collapse of HIH might be pithily summarised by drawing upon the well-known analogy - "a fish rots from the head". Although HIH had firmly in place all the traditional governance structures including a well-credentialed board, an audit committee,



independent auditors and actuaries, the best legal advisors a lot of money could buy and so on, all of those checks and balances failed because of an undue focus upon the letter of the law (although in a number of instances that was also breached), and a failure to give any thought whatsoever to the purpose or objective of the law, or the moral component of the issues which they were addressing. And what struck me perhaps most profoundly, was that although the fish had undoubtedly started to rot at the head, by the time the liquidators were called in, the rot had spread through almost all levels of the corporate group, infecting officers at relatively junior levels, whose key focus was almost always upon whether or not they could get away with what they were doing, rather than upon whether or not what they were doing was right.

Let me try and give you some indication of the dimensions of this problem with some admittedly superficial examples. The profligate expenditure of the Managing Director, unchecked by the Board, set an appalling example of irresponsible leadership. He spent \$380,000 of the company's money buying gold watches. He provided an unsecured and interest-free loan from the company to a friend in an amount of \$500,000. He gave \$1,600 worth of cigars to that man, purchased by the company, at the time the loan was outstanding and no interest was being paid on it. In the last year before the company collapsed, he organised a company Christmas party in Sydney that cost \$800,000. He was regularly giving away about \$5 million per annum of the company's money to charities of



his choice, most of whom reflected his generosity with other people's money by bestowing honours and accolades upon him personally.

It was in that context that a story emerged which is perhaps one of the best known of the Royal Commission. The Managing Director to whom I refer was Mr Ray Williams, although he had taken to calling himself Dr Williams in light of the honorary doctorate conferred by Monash University after he gave large amounts of HIH's money to that university. The amounts expended on travel by him and the other senior executives of the company were extraordinary - there was never any question but that they and their wives would travel, at company expense, in the best available class. Michael West, who as you may know, is a journalist writing for *The Australian*, produced a tongue-in-cheek piece in which he suggested that I had cross-examined Mr Williams to the effect that when he traveled internationally he had always traveled with a companion called Casey Williams, for whom he had also purchased a first class ticket, so that he could put his briefcase on the seat next to him, when his wife wasn't travelling with him. That story was converted into an email which spread like wildfire, and has now translated itself into mythical transcript which exists on a number of websites. But unfortunately I have to tell you that none of its true. So, the irony of it is that my role in that Commission will probably be best remembered for a line of cross-examination which never took place!



Now you might say that I am being a bit petty by criticising these personal extravagances, when obviously they were not of an order of magnitude which could have caused Australia's largest commercial collapse, leaving a deficit of many billions of dollars. And of course that's right. And nor were the extravagances to which I refer illegal. But the lack of respect for proper systems of governance, and the lack of a proper sense of stewardship of the shareholders' funds, came to characterise the major business decisions made at the most senior levels of the company, and also spread like an internet virus through all levels of the company.

At the senior levels, a number of utterly disastrous decisions were taken without proper due diligence and evaluation. They included undertaking major reinsurance business in the UK, embarking on a disastrous insurance venture into the US and another into China, and the acquisition of FAI. At lower levels in the company, it included writing what was described as film insurance, which was in fact a form of underwriting the profitability of film ventures in circumstances where the underwriters had no idea what the film was, or as to its likely profitability. That ill-fated venture lost over \$100 million. At even lower levels still, it extended to providing insurance against a particular outcome in the European Football Cup, which is of course nothing more than gambling; the provision of personal injury insurance to members of the Taiwanese Military Forces at a time of extraordinary tension between Taiwan and China; and the provision of reinsurance to Israeli motor vehicle insurers at a time when



terrorism in that country was having a significant impact on motor vehicle damage. So you can see that although this fish started rotting at the head, the rot spread through the major organs and riddled the flesh. And the mortal illness was concealed from shareholders and investors by the adoption of accounting techniques most but not all of which were legal, but unethical and immoral. Although those accounting techniques differed in detail from those adopted in the United States by Enron, they were implemented by people who had the same lack of commitment to disclosure of the truth in both instances. They might have been the smartest guys in the room, but they didn't have a moral compass.

It seems to me that there are a number of principles of general application which can be extracted from these examples. The first is that corporate leadership and governance is vital to the health and soundness of corporate life, and therefore to our community. People holding senior positions in commerce and industry should never forget that they are seen by many as mentors, and must lead by example.

The second principle I would extract from the HIH experience is that the law - prescription and regulation - simply will not work unless it succeeds in nurturing ethics and morality as core principles in commerce. A Judge cannot sit at every board room table around the country. Perhaps the most the law can aspire to achieve is to nurture and encourage an ethical approach to business which will guide and inform decisions, and,



occasionally, to impose sanctions on those who have lost their ethical compass.

And there is a real danger of the development of a "tick-a-box" mentality in relation to corporate regulation and governance. What I mean by that is a mentality under which boards of directors go through a list of pro-forma questions and tick the box if they can answer the questions affirmatively. Questions such as: "Do we have an independent qualified board?" "Do we have an audit committee?" "Do we have independent auditors?" and so on. HIH could have answered all those questions affirmatively, but it was rotten to the core.

These propositions were well expressed by Dr Fred Robins in a recent paper dealing with corporate governance in the light of the increased regulation reflected by the passage of the Sarbanes-Oxley legislation in the US. He observed:

"At some point we are obliged to recognise that it is ultimately impossible to regulate for ethics and common sense of the sort that might have saved us from HIH, or for that matter, from Enron. Prescriptive rules can provide important bench marks for good corporate governance, but cannot by themselves do much to raise levels of actual performance. No rules would automatically prevent misleading or deceptive conduct any more than they will



prevent outright fraud. Nor will the best rules in the world compensate for negligence, ignorance, apathy or stupidity. So the governance debate has to move beyond the checklist template."¹

So far I have addressed my remarks to law and business, but of course the importance of an ethical and moral dimension is not limited to law or commerce. During my lifetime, this State has seen many regrettable examples of political leaders who have displayed a conspicuous failure to bring an ethical and moral dimension to their important governance roles. During the WA Inc era, there was an extremely unhealthy synergy between government and commerce in this State - a virus of immorality and greed which spread from one group to another and back again, to the detriment of the entire community.

And, regrettably, it seems that the lessons that were learnt from the exposure of that conduct need to be reinforced from time to time through the agency of bodies like the Corruption and Crime Commission. While the work of that Commission has no doubt caused some political pain in the short term, I am optimistic and perhaps naïve enough to think that those pains will be reflected in long term gains in terms of shaping an ethos and culture of morality which will hopefully underpin government at all levels - Local, State and Federal. Just as in commerce, political representatives need to constantly remind themselves why they are there,

¹ Robbins, F - "Corporate Governance after Sarbanes-Oxley: An Australian Perspective" Published in "Corporate Governance" Volume 6, No 1 2006.



which is of course to protect and advance the interests of those they govern, just as the role of company directors is to protect and advance the interests of the shareholders. Just as company directors are required by law to test every action they take against that standard, so should our politicians test their actions against the fundamental question of whether their actions will protect and advance the interests of the community as a whole, and eschew personal and party political interests.

But perhaps I am being naïve. But there is a basic similarity between the roles and duties of our commercial leaders, and our political leaders. Each are stewards, trustees if you like, exercising powers and responsibilities on behalf of others, be they shareholders or voters. And that creates a moral duty to protect and preserve the interests of those others.

So that's the challenge I throw down to you, as commercial leaders, to set examples to the people who work with and for you. There have been some very bad examples in corporate Australia – such as the massive, some would say obscene, golden handshakes, or severance payments paid to departing executives, sometimes justified on the basis that their performance was so bad, that it was in the company's best interests to pay a lot of money to get rid of that person. Now what sort of message does that send – the worse you are, the more we can justify paying you to go away!



And there has probably never been a better place or time than here and now for the corporate and government sectors to provide moral leadership and authority. This State is undergoing an unparalleled period of economic prosperity – business is flourishing at all levels. But history tells us that these are precisely the times at which the gap between the privileged and the deprived in our community tends to widen, rather than narrow, and this boom is no exception. It is ironic that homelessness is at record levels. There are two big shortages in Perth at the moment, one is in basic housing for the less affluent, and the other is for pens for luxury motor yachts.

I believe that we must seize the opportunities which come with prosperity to provide the community services and infrastructure in health, education and welfare which we cannot afford in harder times. Now is the time to finally do something about the worse than third world conditions in which many of the descendants of the first inhabitants of this country live - in remote communities not far from the great resource projects that are generating so much wealth.

We can't leave these important responsibilities entirely to government, although of course government must play a role. We all know that government is not that good at delivering services efficiently and maximising returns from expenditure. Partnerships between public and private enterprises, motivated by a spirit of personal and corporate philanthropy, underpinned by a real commitment to use our many



advantages to make a lasting difference to the quality of life and health enjoyed by all the members of our community seem to me to offer the best chance of creating the kind of Western Australia in which we, and our children, and their children, will feel happy and proud to live.