



STATEMENT BY THE PRESIDENT
Parliamentary Privilege and the *Corruption and Crime Commission*
Act 2003

20 March 2007

Hon Members

I advise the House of some events that have occurred during the last few weeks relating to the activities of the Corruption and Crime Commission. In advising the House I note that, as President, I am charged with upholding the rules, customs and dignity of the House including the protection of the rights and privileges of the House.

Over the last few weeks the Legislative Council has been working cooperatively with the Commission to ensure that both the privileges of the House are maintained, and that the operations of the Commission are not interrupted as a result of any doubt about the applicable law.

Members will note that on 8 March 2007 I, together with the Speaker, communicated directly with Members on the matter of parliamentary privilege and the recent inquiries and hearings of the Commission.

Parliamentary Privilege

‘Parliamentary privilege’ refers to two significant aspects of the law relating to Parliament: the privileges or immunities of the Houses of the Parliament, and the powers of the Houses to protect the integrity of their processes, particularly the power to punish contempts.

Parliamentary privilege provides certain immunities to the Houses of Parliament so as to ensure that the Parliament operates independently and free from interference from the organs of the executive.

These immunities and powers are very extensive, but they carry with them great responsibilities. They are deeply ingrained in the history of free institutions, which could not have survived without them.

Parliamentary privilege emerged as the result of the struggle between the Crown, the courts and the House of Commons in the United Kingdom over hundreds of years. There were many flashpoints. One crucial flashpoint occurred in the second half of the seventeenth century and

related principally to one of the major privileges of Parliament, the right to freedom of speech in the Parliament.

As a result of the conflict between Parliament and James II, the Parliament issued the *Bill of Rights* in 1689. Article 9 of the Bill provides -

“That the freedom of Speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.”

Article 9, forms part of the law of Western Australia through the *Parliamentary Privileges Act 1891* which confers on the Legislative Council and the Legislative Assembly the privileges, immunities and powers of the House of Commons of the United Kingdom as at 1 January 1989.

Using the words of the Bill of Rights, it is a fundamental privilege of the Commons, and therefore of this House, that *“proceedings in Parliament ought not to be impeached or questioned in any court or place out of the Parliament”*.

It ensures that Members may speak freely without fear of the consequences. This is a necessary parliamentary protection in a democratic society.

This freedom is also of significance to others who have dealings with Parliament, for example, the freedom also applies to witnesses before parliamentary committees.

In section 16(3) of the Commonwealth *Parliamentary Privileges Act 1987* the Federal Parliament has provided a declaration of the law in this area. Section 16(3) provides:

- (3) *In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:*
- (a) *questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;*
 - (b) *otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or*
 - (c) *drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.*

In 1995 the Privy Council in *Prebble v TVNZ* (1995 Appeal Cases at page 1) endorsed section 16(3) as a fair and accurate statement of the

common law position on parliamentary privilege in relation to proceedings in a court or tribunal.

Both Parliament and the Commission are bound by the law - indeed section 3(2) of the *Corruption and Crime Commission Act* provides:

"Nothing in this Act affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves."

In this context I advise the House of some matters:

1. Section 27A of the *Corruption and Crime Commission Act 2003*

On 18 January 2007 I received a letter from the Commissioner of the Corruption and Crime Commission dated 15 January 2007 seeking to refer a matter to me as Presiding Officer pursuant to section 27A of the *Corruption and Crime Commission Act 2003*. The matter related to misconduct allegations against unnamed ministers influencing chief executive officers about second tier employment decisions. Further correspondence took place. I will appraise the Procedure and Privileges Committee of the matters.

2. Request by CCC for access to records, members and officers

On 12 March 2007 I received a letter from the Commissioner requesting access to committee records, committee members and committee staff for the purpose of the Commission's investigations in relation to a proposed inquiry by the Legislative Council Standing Committee on Estimates and Financial Operations.

For the consideration of the House I table:

- Letter to me dated 12 March 2007 from the Commission.
- My letter dated 13 March 2007 to the Commission.

I reiterate that, as President, I am charged with upholding the rules, customs and dignity of the House including the protection of the rights and privileges of the House. I also reiterate that both Parliament and the Commission are bound by the law.

Parliament, in anticipation of these types of investigations, enacted the *Corruption and Crime Commission Act 2003* and included specific procedures in sections 27A and 27B to enable certain investigations to be undertaken.

The process enables the Commission to refer allegations to the relevant presiding officer to be dealt with by a committee of the House whose

functions include considering matters relating to the practice, procedure and privileges of the House ("Privileges Committee").

In referring any allegations the Commission must: (a) name the member or officer concerned; (b) state the grounds on which the allegation is made and (c) state the nature of misconduct by reference to a particular provision of the Act. If a referral has been made in accordance with those terms then the Presiding Officer must refer the matter to the Privileges Committee. If the Privileges Committee resolves to carry out its own inquiry it must do so by directing the Commission to conduct the inquiry on behalf of the House. The Commission, as an agent of the Parliament, is then provided all the parliamentary privileges to conduct its investigations and must act in conformity with the *Parliamentary Privileges Act*.

Section 27A(5) further provides that nothing prevents a member or officer who is subject to a referral from being charged with an offence whether or not the charge relates to the matters that form the basis of the allegation. That is - allegations involving criminal matters would, of course, be referred to prosecuting authorities.

As stated, over the last few weeks the Legislative Council has been working cooperatively with the Commission to ensure that both the privileges of the House are maintained, and that the operations of the Commission are not interrupted as a result of any doubt about the applicable law.



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**



Your ref:
Our ref: 0899/2006

12 March 2007

The Hon. Nick Griffiths MLC
President
Legislative Council
Parliament House
PERTH WA 6000

Dear Sir

PARLIAMENTARY PRIVILEGE

The Commission is currently conducting an investigation into whether misconduct by public officers arising in connection with the activities of other persons, including but not limited to lobbyists, has or may have occurred or is occurring. As you know the Commission recently conducted public hearings as a part of its ongoing investigation.

One matter before the Commission is whether any public officer has engaged in misconduct or criminal conduct in relation to the proposed inquiry by the Legislative Council's Estimates and Financial Operations Standing Committee into the State's iron ore policy. The broad scope of some of the Commission's concerns with regard to this matter are available at the Commission's website, more specifically the hearing transcripts of 28 February at pages 959 to 960.

In order for the Commission to advance its investigations, for the purposes of conducting further public hearings and/or bringing disciplinary and/or criminal charges if appropriate, it requests access to and use of the following:

- All minutes and records of the Committee's proceedings and deliberations touching on the proposed inquiry into the State's iron ore policy.
- All Committee members and staff attached to the Committee at the relevant time for the purposes of interviewing and taking statements from them.

In making these requests, the Commission notes that they may touch on matters of parliamentary privilege. Consequently, I seek your advice whether parliamentary

privilege will prevent you from being able to meet these requests. Further, if parliamentary privilege is not an impediment what arrangements should be made to enable the Commission to continue its investigation?

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kevin Hammond', written in a cursive style. The signature is positioned above the printed name and title.

Kevin Hammond
COMMISSIONER



Hon Nick Griffiths MLC

13 March 2007

Mr Kevin Hammond
Commissioner
Corruption and Crime Commission of Western Australia
186 St George's Terrace
PERTH WA 6000

Dear Commissioner

Parliamentary Privilege

Section 3(2) of the *Corruption and Crime Commission Act 2003* states:

"Nothing in this Act affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable exclusively by a House of Parliament, unless that House so resolves."

The matters you raise in your letter dated 12 March 2007 do touch on matters of parliamentary privilege. Parliamentary privilege is a collective privilege of the Houses. It is not for an individual Member or officer to make decisions which affect its application.

I will bring your request to the attention of the House when it resumes sittings on Tuesday, 20 March 2007 by tabling your letter of 12 March 2007. One of the options available to the House is to refer the request to a Privileges Committee for consideration.

I observe that it is not open to the House, by its own resolution, to waive its privileges or immunities so as to enable the Commission or another authority to deal with material inconsistently with Article 9 of the *Bill of Rights*.

Yours faithfully

Hon Nick Griffiths MLC
President of the Legislative Council

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PARLIAMENT OF WESTERN AUSTRALIA