



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 11**

**STANDING COMMITTEE ON PROCEDURE AND  
PRIVILEGES**

**REFERRAL OF TABLED PAPER 2380 - REQUEST  
BY THE CORRUPTION AND CRIME COMMISSION  
FOR ACCESS TO AND USE OF PARLIAMENTARY  
PROCEEDINGS**

Presented by Hon Nick Griffiths MLC (Chairman)

April 2007

## STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

**Date first appointed:** 24 May 2001

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

**“6. Procedure and Privileges Committee**

- 6.1 A *Procedure and Privileges Committee* is established.
- 6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (*all ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.
- 6.3 With any necessary modifications, SO 326A applies to a co-opted member.
- 6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees.
- 6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

### **Members as at the time of this inquiry:**

Hon Nick Griffiths MLC (Chairman)	Hon Simon O’Brien MLC
Hon George Cash MLC (Deputy Chairman)	Hon Louise Pratt MLC
Hon Graham Giffard MLC	Hon Sally Talbot MLC (co-opt member)
Hon Ray Halligan MLC	

### **Staff as at the time of this inquiry:**

Mia Betjeman, Clerk of the Legislative Council  
Malcolm Peacock, Deputy Clerk

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## REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

### IN RELATION TO THE

#### REFERRAL OF TABLED PAPER 2380 - REQUEST BY THE CORRUPTION AND CRIME COMMISSION FOR ACCESS TO AND USE OF PARLIAMENTARY PROCEEDINGS

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## 1 BACKGROUND

### Request by the Corruption and Crime Commission

- 1.1 On 12 March 2007 the Commissioner of the Corruption and Crime Commission (CCC), Mr Kevin Hammond, wrote to the President.<sup>1</sup> The letter indicated the CCC 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, stating:

*One matter under investigation by the CCC is in relation to a proposed inquiry by the Legislative Council's Estimates and Financial Operations Standing Committee into the State's iron ore policy.*

- 1.2 The Commissioner's letter went on to state:

*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 requires 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.*

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<sup>1</sup> Western Australia, Legislative Council, Tabled Paper No 2380.

## President's response

- 1.3 The President responded to the CCC's letter on 13 March 2007 and, in part, stated:<sup>2</sup>

*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.*

## President's Statement

- 1.4 On 20 March 2007, the first day of sitting for the Legislative Council in 2007, the President drew the CCC's request to the attention of the House in a statement and tabled the Commissioner's letter and his response.<sup>3</sup>

## 2 REFERENCE AND PROCEDURE

### Reference by the House

- 2.1 On 21 March 2007, the House resolved (on the motion of Leader of the House):<sup>4</sup>

*That tabled paper 2380, tabled in this House on 20 March 2007, being correspondence between the President and the Corruption and Crime Commission, be referred to the Procedure and Privileges Committee for consideration and report on or before Wednesday, 4 April 2007.*

### Committee membership and procedure

- 2.2 The Procedure and Privileges Committee (**Committee**) granted leave of absence to Hons Murray Criddle, Ken Travers and Giz Watson MLCs and co-opted Hon Sally Talbot MLC for the Committee's inquiry into the matter.<sup>5</sup>

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<sup>2</sup> *ibid.*

<sup>3</sup> Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 March 2007, pp258-259.

<sup>4</sup> *ibid.*, 21 March 2007, pp427-428.

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- 2.3 The Committee met on four occasions on 27 March, 29 March, 2 April and 3 April 2007 to consider the matter.
- 2.4 The Committee wrote to the Chair of the Standing Committee on Estimates and Financial Operations (**Estimates Committee**) requesting copies of all minutes and records relevant to the Estimates Committee's consideration of a proposed inquiry into the State's iron ore policy (**Proposed Inquiry**). The Committee requested that only those matters relevant to the Proposed Inquiry should be provided, with matters not relevant being blanked out.
- 2.5 A list of the documents received from the Estimates Committee is attached as Appendix 1 (**Documents**).

### **3 USE OF THE MATERIAL AND INFORMATION OBTAINED**

- 3.1 The immunities of the Houses are established by law, and a House or a member cannot change that law any more than they can change any other law in the absence of clear legislative authority. It is not possible for either a House or a member to waive, in whole or in part, any parliamentary immunity to enable parliamentary proceedings to be used contrary to Article 9 of the *Bill of Rights 1689*.
- 3.2 While the House has power to *release* material, the release does not waive, nor is it capable of waiving, parliamentary privilege.
- 3.3 The CCC is also required to act in accordance with the law.<sup>6</sup>

### **4 ACCESS TO DOCUMENTS**

- 4.1 The Committee has reviewed the Documents provided by the Estimates Committee and made its determination having regard to the nature of the document and the relevance of the material in light of the Committee's overall discretion. To assist the House, the list at Appendix 1 includes a brief description of the material and the Committee's recommendation as to release.

### **5 ACCESS TO STAFF AND MEMBERS**

- 5.1 The Committee observes that it is open for the CCC to request an interview with members and staff of the Estimates Committee.
- 5.2 Evidence of proceedings in Parliament that is consistent with the privileges of the House, including Article 9 of the *Bill of Rights 1689*, can be given by members, without leave, but they cannot be compelled to do so.

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<sup>5</sup> Committee membership for the purposes of this inquiry is set out in the inside cover of this report.

<sup>6</sup> *Corruption and Crime Commission Act 2003*, s3(2).

5.3 In respect of staff it is noted that Legislative Council Standing Orders provide that:<sup>7</sup>

***Officers not to give evidence without leave***

*432 No clerk or officer of the Council or shorthand writer employed to take down speeches in, or minutes of evidence before the Council or any committee thereof, may give evidence elsewhere in respect of any proceedings or examination had at the Bar, or before any committee of the Council, without the leave of the Council.*

5.4 Accordingly leave of the House is required for committee staff to provide evidence to the CCC in respect to the Proposed Inquiry. The Committee has identified the relevant staff.

5.5 The Committee has carefully considered whether, at this stage, to authorise disclosure of committee deliberations to a place outside of Parliament - in this instance the CCC. The Committee observes that the CCC may hold hearings open to the public.

5.6 The general principle governing publication or premature disclosure of committee proceedings is:<sup>8</sup>

*The publication or disclosure of debates or proceedings of committees conducted with closed doors or in private, or when publication is expressly forbidden by the House, or of draft reports of committees before they have been reported to the House will constitute a breach of privilege or a contempt.*

5.7 Confidentiality is an aspect of privilege. It ensures that the House is the first recipient of the committee's deliberations and that a committee's work is not prejudiced by premature disclosure.<sup>9</sup> Confidentiality is also designed to facilitate a co-operative environment for members working on a committee by ensuring that matters discussed in the committee remain confidential to that committee unless it is resolved otherwise.

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<sup>7</sup> The rationale for a similar rule in the Commonwealth Senate is that the House should know of any evidence given elsewhere in relation to its proceedings, so that it may ensure that such evidence is not given contrary to the law relating to the protection of parliamentary proceedings from question in other bodies.

<sup>8</sup> C J Boulton (ed), *Erskine May's Treatise on the Laws, Privileges, Proceedings and Usage of Parliament (Parliamentary Practice)*, 21<sup>st</sup> edition, Butterworths, United Kingdom, 1989, p154.

<sup>9</sup> Legislative Council Standing Order 328 provides:

**“Proceedings not noticed until reported**

328 Proceedings of a committee are not noticed by the Council until reported.”



- 5.8 An important part of how a committee works is the confidence that members have that what they say in private at deliberative meetings will not become public knowledge. This is essential if a committee is to build consensus.
- 5.9 In this instance the Committee also notes that on 21 March 2007 the House appointed a Select Committee of Privilege on a Matter Arising in the Estimates and Financial Operations Committee. The Select Committee has not yet reported. It is to do so on or before 30 May 2007.
- 5.10 The Committee considers that it is not appropriate, at this time, to authorise committee deliberations to be disclosed to a place outside of Parliament (other than by provision of the Documents to the CCC) as it may pre-empt the Select Committee's inquiry or prejudice its proceedings.
- 5.11 Accordingly any confidentiality attaching to parliamentary proceedings ordered by the House or committee or applying by virtue of the custom, usage and law of Parliament, should be observed by committee members and staff. Committee members and staff, if being interviewed or examined, will therefore need to be mindful of not disclosing committee deliberations as any unauthorised disclosure could be treated as a contempt of Parliament.
- 5.12 The Committee also observes that in making inquiry the CCC would need to ensure that its investigations do not contravene Article 9 of the *Bill of Rights 1689* and the CCC's empowering Act.<sup>10</sup> This is reflected in Committee Recommendation paragraph 2.

## **6 FURTHER DISCUSSION**

- 6.1 Consistent with the co-operative approach between the Legislative Council and the CCC, the Committee notes that the President is available to meet with the CCC to discuss matters arising from the Committee's Recommendation.

## **7 RECOMMENDATION**

The Committee recommends that the House do resolve -

- 1 The Clerk is authorised:
  - a) to provide access to the Corruption and Crime Commission to the documents noted for release in Appendix 1 of the report of the Procedure and Privileges Committee dated 4 April 2007 (**Documents**); and

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<sup>10</sup> *Corruption and Crime Commission Act 2005*, s3(2).

- b) to provide copies of the Documents if requested in writing by the Corruption and Crime Commission.
2. The Corruption and Crime Commission:
- a) shall use the Documents only for the investigative purposes of the Corruption and Crime Commission; and
  - b) in dealing with the Documents shall not act in breach of the powers, privileges, rights and immunities of this House.
3. That staff attached to the Legislative Council Standing Committee on Estimates and Financial Operations at the time of its proposed inquiry into the State's iron ore policy (**Proposed Inquiry**) be granted leave to give evidence to the Corruption and Crime Commission in relation to the Proposed Inquiry but not so as to disclose committee deliberations. The Clerk is authorised to provide a list of names, identified by the Committee, to the Corruption and Crime Commission.



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**Hon Nick Griffiths MLC**  
**President of the Legislative Council**  
**Chairman**

**Date: 4 April 2007**

# APPENDIX 1

## LIST OF DOCUMENTS

No	Date	Document	Status
1	27/11/2006	Letter to Chair, Estimates and Financial Operations Committee from the Association of Mining and Exploration Companies (Inc) (AMEC) (advising it was aware of a proposed inquiry)	Release
2	18/12/2006	Letter to committee staff from Hon Anthony Fels MLC (outlining proposed terms of reference for possible inquiry into the State's iron ore industry)	Release
3	30/10/2006	Extract of Minutes of Committee Meeting (Hon Anthony Fels MLC indicating he would like an inquiry into the iron ore industry, consideration deferred until next meeting)	Release
4	13/11/2006	Extract of Minutes of Committee Meeting (indicates terms of reference not considered as foreshadowed by minutes of 30/10/2006)	Release
5	15/11/2006	Extract of Minutes of Committee Meeting (indicates consideration of terms of reference deferred )	Release
6	4/12/2006	Extract of Minutes of Committee Meeting (indicates consideration of terms of reference deferred )	Release
7	13/12/2006	Extract of Agenda for Committee Meeting (noting proposed inquiry)	Release
8	13/12/2006	Extract of Minutes of Committee Meeting (general matters relating to the iron ore policy)	Release
9	31/01/2007	Extract of Agenda for Committee Meeting (noting proposed inquiry)	Release
10	31/01/2007	Extract of Minutes of Committee Meeting (indicates consideration of terms of reference deferred, outgoing correspondence and a summary by the Advisory Officer (General))	Release

*Procedure and Privileges Committee*

<b>No</b>	<b>Date</b>	<b>Document</b>	<b>Status</b>
11	19/03/2007	Extract of Minutes of Committee Meeting (Comment by Hon Ken Travers MLC regarding previous inquiries)	Release
12	8/01/2007	Letter from the Estimates Committee to Hon Eric Ripper MLA, Minister for State Development (Letter requesting information on the iron ore policy)	Release
13	8/01/2007	Letter from the Estimates Committee to Hon Fran Logan MLA, Minister for Resources (Letter requesting information on the iron ore policy)	Release
14	25/01/2007	Letter to the Estimates Committee from Hon Eric Ripper MLA, Minister for State Development (response to letter dated 8/01/2007)	Release
15	9/02/2007	Letter to the Estimates Committee from Hon Fran Logan MLA, Minister for Resources (response to letter dated 8/01/2007)	Release
16	31/01/2007	Internal Memorandum to Committee members from Advisory Officer (General) (redrafting possible terms of reference for a proposed inquiry)	Release
17	26/03/2007	Extract of Agenda for Committee Meeting (noting proposed inquiry)	Release
18	26/03/2007	Extract of Minutes of Committee Meeting (deferring consideration of letter from Hon Anthony Fels MLC with terms of reference)	Release
19	5/12/2006	E-mails between Committee Clerk and Advisory Officer (General) (Contact with Mr Ian Loftus at AMEC regarding letter of 27/11/2006)	Release
20	1/03/2007	Phone file note detailing conversation with Mr Chris Richards of Rio Tinto Limited (seeking to confirm the proposed inquiry)	Release
21	20/03/2007	Phone file note detailing conversation with Mr Ian Loftus of AMEC (relating to inquiry by AMEC as to the status of any inquiry)	Release

<b>No</b>	<b>Date</b>	<b>Document</b>	<b>Status</b>
22	20/03/2007	E-mails between Committee Clerk and Advisory Officer (General) (relating to inquiry by AMEC as to the status of any inquiry)	Release
23	20/03/2007	E-mail from Committee Clerk to Chair (relating to inquiry by AMEC as to the status of any inquiry)	Release