



***PROCEDURE AND PRIVILEGES
COMMITTEE***

**REPORT ON PERSONS REFERRED TO
IN THE LEGISLATIVE ASSEMBLY**

MR MALCOLM McCUSKER AO QC

REPORT NO. 4

2007

Presented by Ms Dianne Guise, MLA
Deputy Speaker of the Legislative Assembly
Laid on the Table of the Legislative Assembly
27 November 2007

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Procedure and Privileges Committee

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COMMITTEE'S FUNCTIONS AND POWERS

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

Procedure and Privileges Committee

284. (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to -
- (a) examine and report on the procedures of the Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (2) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

REPORT

The Speaker of the Legislative Assembly referred to the Procedure and Privileges Committee a letter from Mr Malcolm McCusker AO QC seeking to use Standing Order 114 to respond to comments made on 22 November 2007 by the Member for Avon, Mr Max Trenorden, MLA.

The Committee has agreed to the attached response proposed by Mr Malcolm McCusker AO QC.

In accordance with Standing Order 114 the Committee has not considered or judged the truth of any statements made in the Legislative Assembly or in the submission.

Recommendation

Your Committee recommends –

That a response by Mr Malcolm McCusker AO QC in the terms specified in the Appendix to this report, be incorporated in *Hansard*.

HON. FRED RIEBELING, MLA
CHAIRMAN OF THE COMMITTEE
27 November 2007

APPENDIX

RESPONSE BY MR MALCOLM MCCUSKER AO QC

AGREED TO BY MR MALCOLM MCCUSKER AO QC AND THE PROCEDURE AND PRIVILEGES COMMITTEE PURSUANT TO STANDING ORDER 114

27 November 2007

The Speaker of the Legislative Assembly
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Sir

I refer to statements made by Mr Max Trenorden in the House on the afternoon of Thursday 22 November 2007, purporting to be based on the November 2007 Report of the Select Committee of Privilege, recently tabled. I wish to make a statement in response, to correct several factual errors:

- Mr Trenorden incorrectly stated that I "*was involved with Anthony Fels*". That is untrue, and no statement to that effect is contained in the Report. I did not meet with, correspond with or speak to Mr Fels regarding any of the matters the subject of the Report. Indeed, to the best of my knowledge, I have never spoken to Mr Fels, other than (possibly) on a social occasion. And the Report does not say that I have.
- Mr Trenorden incorrectly stated that I was "one of the major participants" and "*involved in drawing up the terms of reference*". That is not so. As senior counsel, I was asked by Mr Edel to consider some draft terms of reference which I understood were to be submitted to a Parliamentary Committee for consideration. My sole role in the matter, as a lawyer advising a client, was to consider whether the draft terms of reference fell within the terms of reference of the Committee. I did not draft the terms of reference, and my role was limited to giving that advice. Nowhere in the Report is it suggested otherwise, and to refer to me as "*one of the major participants*" and "*a core player in the conspiracy*." is unsupported by anything in the Report (either at page 115, to which he referred, or any other page) and is plainly incorrect.

- Mr Trenorden stated "*Malcolm McCusker was at those meetings and he received the emails*". That, again, is incorrect and unsupported by anything in the Report. I did not attend any of the meetings referred to in the Report, nor does the Report suggest that I did. It is true that I had received one email (not "*the emails*"), but that was an email from Mr Edel, requesting me (as senior counsel) to advise whether the terms of reference, which he had drafted, fell within the Committee's terms of reference.
- Mr Trenorden asked, rhetorically, what "*role*" I played with Anthony Fels or with Shelley Archer. There is no suggestion in the Report that I played any "*role*" with either of those persons, and the fact is that I did not. I have had no dealings with either of them, in this or any other matter.
- Mr Trenorden asserted that my position as Parliamentary Inspector is "*under an enormous cloud*". There is nothing in the Report to support that assertion. In advising on the simple question, of whether the draft terms of reference fell within the Standing Committee's purview, I was not acting as Parliamentary Inspector. And that question did not, and could not, come within the statutory functions of the Parliamentary Inspector, whose role is, essentially, to oversee the operations of the Corruption and Crime Commission - not to deal with issues concerning the House or its Committees.

These incorrect statements by Mr Trenorden adversely affect me, and I therefore respectfully request that my response be published, and incorporated into Hansard.

Yours faithfully

MALCOLM McCUSKER AO QC