



***PROCEDURE AND PRIVILEGES  
COMMITTEE***

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

**MR MIKE ALLEN**

**REPORT NO. 3**

**2008**

Presented by Ms Dianne Guise, MLA  
Deputy Speaker of the Legislative Assembly  
Laid on the Table of the Legislative Assembly  
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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 dated 30 April 2008 from Mr Mike Allen, seeking to use Standing Order 114 to respond to comments made on in a report tabled in the Legislative Assembly, specifically:

- The Corruption and Crime Commission's 9 October 2007 *Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup*.

The Committee has agreed to the attached response proposed by Mr Allen.

In accordance with Standing Order 114 the Committee has not considered or judged the truth of any statements made in the Corruption and Crime Commission's report or in the submission.

### **Recommendation**

Your Committee recommends –

That a response by Mr Mike Allen in the terms specified in the Appendix to this report, be incorporated in *Hansard*.

HON. FRED RIEBELING, MLA  
CHAIRMAN OF THE COMMITTEE  
15 May 2008



## **APPENDIX**

### **RESPONSE BY MR MIKE ALLEN**

#### **AGREED TO BY MR MIKE ALLEN AND THE PROCEDURE AND PRIVILEGES COMMITTEE PURSUANT TO STANDING ORDER 114**

On 9 October 2007 the Corruption and Crime Commission tabled a report in Parliament titled “Report on the Investigation of Alleged Public Sector Misconduct Linked to the Smiths Beach Development at Yallingup”. The report makes a number of recommendations including one referring to Mr. Michael Allen.

The CCC report of 9 October (p79) states:

“5.4.1 Commission’s Opinion on Mr. Allen’s Conduct (in part)

Mr Allen’s conduct in August 2006, in agreeing to appoint the departmental officer preferred by Mr. Burke to write the DPI report on Smiths Beach in preference to other officers, involved a performance of his duties that was not impartial. The conduct could constitute a serious breach of the Public Sector Code of Ethics in that there was a failure to act with integrity in the performance of official duties. This conduct therefore constitutes misconduct pursuant to sub-paragraphs 4 (d)(ii) and (vi) of the CCC Act.

The Commission therefore recommends:

***That consideration be given to the taking of disciplinary action against Michael Allen by the Director General of the Department of Planning and Infrastructure for lack of integrity in relation to his complying with the wishes of Mr. Burke and his client in regard to the appointment of a certain departmental officer to write a report.***

In response to this recommendation the Director General for the Department of Planning and Infrastructure undertook an investigation by Ms Petrice Judge, a senior officer of the Department of Premier and Cabinet. The report was prepared in accordance with the lawful procedures set out in the Public Sector Management Act.

The investigation report was finalised in mid-January 2008 and a summary of its findings was released on 1 February 2008. The summary included:

- It was consistent with public sector and departmental practice for a senior officer, such as Mr. Allen, to communicate with, and respond to, Mr. Burke’s queries in Mr. Burke’s capacity as a representative for Canal Rocks Pty Ltd.
- An analysis of the conversations of 4 August 2006 indicated that Mr. Burke did not explicitly request that Mr. Allen appoint officer X to write the departmental report. Rather, Mr. Burke sought and received confirmation from Mr. Allen that officer X would be the “entry point” for the proponent in relation to the proposed Smiths Beach development.

- There was no evidence that officer X was asked to write a departmental report. In fact, in March 2006, officer X had already completed advice for the proponent on what the development proposal needed to include in order to meet state planning policy requirements.
- Mr. Allen did not supervise officer X and had no power to appoint that officer to undertake any tasks in relation to the proposed Smiths Beach development.
- Mr. Allen's actions in returning Mr. Burke's call and being prepared to assist by suggesting that officer X be the "entry point" were judged to be consistent with the departmental practice of assisting representatives of proponents to ensure compliance with all legislative and policy requirements.

After considering all of the evidence, the Director General was satisfied that there was no breach of discipline, and therefore no further action would be taken against me. This advice was provided to me by letter dated 21 January 2008.

On 7 March 2008 the Parliamentary Inspector for the CCC, Mr. McCusker released an independent review of the CCC report and concluded *inter alia*:

- No satisfactory explanation has been given by the CCC for the omission from the Report of the evidence of Ms. Pedersen (*Note: referred to as officer X in the DPI investigation*), nor for the failure to interview Ms. Clegg, Mr. Singleton and Ms. Cherrie, all of whom would have given additional evidence inconsistent with the CCC's finding of misconduct.
- The "finding" or "opinion" of misconduct expressed in the Report was made:
  - (a) without referring to the evidence of Ms. Pedersen, which contradicted the finding;
  - (b) without interviewing important and obviously relevant witnesses, whose evidence also would have contradicted the CCC's finding;
  - (c) by inferring that from a TI conversation on 4 August 2006 between Mr. Burke and Mr. Allen that Mr. Allen "had agreed to appoint Ms. Pedersen to write a DPI report on Smiths Beach in preference to Ms. Clegg", although Mr. Allen did not, in fact, say that; and
  - (d) relying on claims made by Mr. Burke to Mr. McKenzie and to Mr. Grill in monitored conversations to support that inference.

Mr. McCusker details a list of a series of failures in the CCC investigation and therefore the unsoundness of its opinion.

The report also found that "the CCC failed to comply with the requirements of S86 of the Act, as it did not give Mr. Allen a reasonable (or any) opportunity to respond to the findings in the Commission's report, before it was published, on which its conclusion of "misconduct" was based."

Both the Public Sector Management Act investigation and the report by the Parliamentary Inspector arrived at similar conclusions that Mr. Michael Allen had **no case to answer**.

I should also point out that these two investigations completely refute the allegation contained in the Smiths Beach report at paragraph 5.4.2 wherein it suggested I was susceptible to the influence of (mainly) Mr. Burke and had compromised the integrity of my department.

Mr. Speaker, the release of the CCC report in October last year has caused some enormous strain on me and my family, in that it has caused my integrity and professional reputation to be questioned in public, it has placed me under great emotional stress, it has left my career prospects in limbo, and has led me to being stood aside from a senior public service position for the past seven months. Mr. McCusker has described the public accusations of misconduct as “extremely prejudicial.”

There has to be a better way of handling these matters in the future, from the use of public enquiries through to the production of final reports. In his report, Mr. McCusker has made a number of recommendations to the CCC as to how these processes can be handled in misconduct cases in order to improve their procedural fairness and investigative rigour. In my opinion, the CCC should follow these recommendations in future.

Mr. Speaker, I have raised only the issues associated with the opinions and recommendations of the CCC report of 9 October 2007. I have already raised with you my concerns with respect to the report tabled by the CCC on 14 March 2008, which I have previously raised with the Parliamentary Inspector. I understand this report is going to be considered by the Joint Standing Committee of the CCC. Nevertheless, I wish to reiterate my grave concerns with the release of this second report. The CCC chose to release this report in the face of investigations undertaken under the Public Sector Management Act and by the Parliamentary Inspector, both of which cleared me of any wrongdoing. It perpetuates the damage to my personal and professional reputation, and continues the victimisation that I feel the CCC is pursuing against me. Further, the section under which the second report was released does not provide me with any right of reply.

I would appreciate you forwarding this letter in its entirety to your Procedures and Privileges Committee for its consideration and request that, in the interests of natural justice, it be read into Hansard.

Yours faithfully,

Mike Allen