



***PROCEDURE AND PRIVILEGES
COMMITTEE***

**INQUIRY INTO THE MEMBER FOR
MURCHISON-EYRE'S UNAUTHORISED
RELEASE OF COMMITTEE DOCUMENTS
AND RELATED MATTERS**

Report No. 2

2007

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Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters

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INQUIRY INTO THE MEMBER FOR MURCHISON-EYRE'S UNAUTHORISED RELEASE OF COMMITTEE DOCUMENTS AND RELATED MATTERS

Report No. 2

2007

Presented by:
Hon. Fred Riebeling, MLA
Speaker of the Legislative Assembly
on 20 June 2007

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PROCEDURES 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) The Procedure and Privileges Committee will have the powers of a select committee.
- (3) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (5) 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.

INQUIRY TERMS OF REFERENCE

On 28 February 2007 the Legislative Assembly referred the following matter to the Procedure and Privileges Committee for its investigation and report to the House -

- (1) That this House refers to the Procedure and Privileges Committee for inquiry and report on the actions of the Member for Murchison-Eyre in relation to the Inquiry into Vanadium Resources at Windimurra undertaken by the Economics and Industry Standing Committee and his involvement in releasing a confidential committee draft report and the making of amendments to that report.
- (2) That the Committee make both findings and recommendations as to what action should be taken by the House as a result of the actions of the Member.

Extension of Terms of Reference

On Wednesday 9 May 2007 the Legislative Assembly agreed unanimously to the following motion:

That the terms of reference given to the Procedure and Privileges Committee for its inquiry into the Member for Murchison-Eyre's Early Release of Committee Documents were extended to allow -

- (3) That the Committee may inquire into and report on any matter regarding the workings of the committee and external contacts in relation to the Windimurra inquiry;
- (4) That the House gives leave to the Procedure and Privileges Committee to seek information from the then Principal Research Officer to the Economics and Industry Standing Committee at the relevant time.

Under Standing Order 255, the report date is 1 March 2008 but the Committee undertook to report to the House as soon as it is practicable to do so.

FINDINGS

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Finding 1

Your Committee finds that, without authorisation and ignoring clear warnings not to do so, Mr John Bowler, MLA released the Chair's Draft Report to the Hon. Julian Grill.

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Finding 2

Your Committee finds that Mr John Bowler, MLA understood that the Hon. Julian Grill was representing Precious Metals Australia Limited's commercial interests.

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Finding 3

Your Committee finds that Mr John Bowler, MLA, as a member of the Economics and Industry Standing Committee, was aware that Precious Metals Australia had initiated proceedings against Xstrata in the New South Wales Supreme Court prior to the conclusion of the inquiry.

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Finding 4

Your Committee finds that Mr John Bowler, MLA, understood that the proposed amendments to the Chair's Draft Report received from the Hon. Julian Grill were drafted by Mr Roderick Smith on behalf of Precious Metals Australia.

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Finding 5

Your Committee finds that the 'MP' modifications to the 'Smith' amendments and additional 'MP' amendments to the Chair's Draft Report were made by Mr John Bowler, MLA, or Mr Tony McRae, MLA, or both, and that those amendments were typed on Mr McRae's computer.

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Finding 6

Your Committee finds that the decision by the Clerk of the Legislative Assembly in November 2004, not to draw the Presiding Officer's attention to the suspected unauthorised release of a Committee document, was an error in judgement.

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Finding 7

Your Committee finds that the Hon. Julian Grill forwarded the Chair's Draft Report onto his client Mr Roderick Smith of Precious Metals Australia, who had a direct interest in the outcome of the Committee's inquiry. This was done in full knowledge of the ramifications of doing so and despite the written disclosure warning in the email.

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Finding 8

Your Committee finds that Mr Roderick Smith was requested by the Hon. Julian Grill to contribute money to the ALP Riverton Election Campaign fund, by attending a fund-raising dinner, hosted by Mr Tony McRae, MLA, during the Economics and Industry Standing Committee's inquiry. Mr McRae failed to rescind that request, despite having an opportunity to do so. This was aggravated in January 2005 by Mr McRae's request for a campaign donation from Mr Roderick Smith.

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Finding 9

Your Committee finds that Mr John Bowler, MLA, was reckless as to whether his actions could have the effect of -

- (a) diminishing the standing of Legislative Assembly Committees;
- (b) diminishing the standing of the Legislative Assembly;
- (c) reducing confidence of the public in the capacity of the Parliament to undertake its work in a fair and impartial manner; and
- (d) undermining the trust in individual members to properly represent the people of Western Australia.

RECOMMENDATIONS

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Recommendation 1

Your Committee recommends –

The Legislative Assembly -

- (a) find the Member for Murchison-Eyre guilty of contempt of the Legislative Assembly in that he deliberately disclosed confidential proceedings of the Economics and Industry Standing Committee by releasing a Chair's Draft Report without authorisation;
- (b) note that the contempt is aggravated because the Member for Murchison-Eyre knew:
 - (i) that the premature release would directly advantage a personal friend, the Hon. Julian Grill; and
 - (ii) would significantly affect the commercial interests of two companies operating in Western Australia, namely Precious Metals Australia and Xstrata;
- (c) strongly censure the Member for Murchison-Eyre for his actions which have diminished public trust in Parliamentary institutions and processes;
- (d) disqualify the Member for Murchison-Eyre from membership of any Parliamentary Committee for the remainder of the 37th Parliament;
- (e) suspend the Member for Murchison-Eyre from the service of the House for a period of 7 sitting weeks or 21 sitting days, whichever is the longer; and
- (f) direct the Member for Murchison-Eyre not to enter the parliamentary precincts until the suspension period in paragraph (e) has expired.

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Recommendation 2

Your Committee recommends that the Hon. Julian Grill be found in contempt of Parliament, by reason of his actions of forwarding the Chair's Draft Report to Mr Roderick Smith.

Recommendation 3

Your Committee recommends that the Member for Riverton be given the opportunity to apologise to the House for potentially diminishing public trust in Parliamentary institutions and processes through his failure as Chairman and member of the Economics and Industry Standing Committee to ensure that Mr Roderick Smith did not attend the ALP Riverton Election Campaign fundraising event as a paying participant during that Committee's inquiry.

CHAIRMAN'S FOREWORD

I present for Tabling the second report of the Procedure and Privileges Committee for 2007 entitled *Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters*.

This has been a particularly difficult inquiry for this Committee. The unauthorised release of Committee documents represents a serious breach of process and trust, specifically the processes that support the proper workings of the Parliament itself and the trust required between members as they go about their Parliamentary business.

The Committee is of the view that the Member for Murchison-Eyre did knowingly breach the rules in this regard by releasing a document to a person with a commercial interest in the outcome of the inquiry. The Member for Murchison-Eyre should have known the damage the unauthorised release would do to the Committee system of the Legislative Assembly.

The Clerk of the Legislative Assembly was notified of the possible breach prior to the Tabling of the final report, and did not act on this suspicion. It is my view that the Clerk should have reported the potential breach to me, as Speaker of the Legislative Assembly, at the earliest possible time, as it is ultimately for the Presiding Officer to determine how to proceed with matters such as these.

Following our initial investigations into the unauthorised release of Committee documents, further documentary evidence was received from the Corruption and Crime Commission. This information led to the expansion of the Committee's Terms of Reference to include matters not initially considered, namely the perception of conflict that may occur when members' fundraising activities can be linked to Parliamentary Committees.

The perception of a conflict between a member's fundraising activities and that member's role on a Parliamentary Committee has the potential to diminish public trust in the institution of Parliament. The Committee accepts that the Member for Riverton was initially unaware of the stakeholder's proposed attendance at a fundraising event. However, he did not take sufficient steps to distance himself from that stakeholder, either at that event or subsequent to it.

I believe there is an un-written obligation on all members of Committees who are conducting inquiries to take a pro-active position to make sure that when fundraising occurs, *no* company with a commercial interest in the outcome of an inquiry is either invited or allowed to contribute funds.

The Committee is mindful that its findings are such that there is no capacity for members to appeal. It is important that uncertain inferences not be considered as evidentiary findings.

I thank my fellow Committee Members for their contributions during this difficult inquiry. The Committee approached its task in a manner befitting the significance and seriousness of the matters under investigation. During the course of the past four months, the Committee heard evidence from the eight principal persons associated with this matter, including all former Members of the Economics and Industry Standing Committee, Mr Julian Grill, Mr Roderick Smith and the former Principal Research Officer to that Committee.

The Committee also retained experienced legal counsel to assist it throughout its deliberations. On behalf of the Committee, I acknowledge the significant contribution made by Mr Ken Pettit SC, whose expert legal and procedural advice was invaluable in the course of the Committee's inquiry.

In conclusion I reiterate the seriousness of the breaches discussed in this report, and implore all members to take note of the consequences of such actions.

HON. F. RIEBELING, MLA
CHAIRMAN

CHAPTER 1 INTRODUCTION

1.1 Initiation of Inquiry

At a public hearing on 27 February 2007 the Corruption and Crime Commission (CCC) revealed evidence that suggested the Member for Murchison-Eyre, Mr John Bowler MLA, who was in 2004 a member of the Economics and Industry Standing Committee (EISC), had released a copy of the Chair's Draft Report on the Committee's 2004 *Inquiry into Vanadium Resources at Windimurra* without authorisation.

The unauthorised release or disclosure of parliamentary proceedings, including draft committee reports, is regarded as a constructive contempt of Parliament. Standing Order 271 (2) of the Legislative Assembly states:

No member of the committee nor any other person will publish or disclose evidence not taken in public including documentary evidence received by the committee unless that evidence has been reported to the Assembly or that disclosure has been authorised, on motion, by the committee.

It was suggested by the CCC that Mr Bowler forwarded a copy of that Chair's Draft Report to his long time friend the Hon. Julian Grill¹, a paid lobbyist for a Western Australian mining company Precious Metals Australia (PMA). PMA was a major stakeholder with a commercial interest in the results of the EISC inquiry.

It was subsequently alleged by the CCC that Mr Grill received considerable remuneration from PMA, including a 'success fee'.

The actions of the Member for Murchison-Eyre and his involvement in releasing the confidential committee Chair's Draft Report, together with associated matters, are the subject of this inquiry.

The matter was formally referred to the Procedure and Privileges Committee (PPC) by the Legislative Assembly during its sitting on 28 February 2007 (refer Terms of Reference at p.vii).

1.2 Conduct of the inquiry

During the course of this Committee's inquiry, members met on 20 occasions, including 19 deliberative meetings and 4 evidence hearings. These meetings included evidence hearings from 8 witnesses on 23 March, 11, 14 and 18 May 2007 (listed at Appendix One). Transcripts from those hearings and related documents, except a closed hearing, are contained in Volume 2 of this report, and are listed as Appendices Two and Three respectively. Volume 2 can be accessed from the Parliament website at www.parliament.wa.gov.au.

The Committee has conducted its own research of available documentary and electronic records in relation to the disclosure of the EISC's Chair's Draft Report. Additional documentation provided by the CCC assisted the PPC with its inquiry.

¹ Mr Grill is the former member for Murchison-Eyre in the Legislative Assembly and is engaged in a consultancy business with Mr Brian Burke, former Premier of Western Australia.

The crucial facts relevant to the inquiry have not been difficult to discern, due in large measure to the available documentary evidence. The Committee also has the benefit of the statement made to the Legislative Assembly by the Member for Murchison-Eyre on 28 February 2007.²

The findings and recommendations of the PPC are set out in the following chapters.

² *Parliamentary Debates*, 28 February 2007, p.118

CHAPTER 2 UNAUTHORISED RELEASE OF COMMITTEE DOCUMENTS

2.1 Background

During early 2004, there was considerable disquiet in Western Australia's mining sector, in the press and among parliamentarians from all sides of politics about the suspension of operations of a vanadium mine at Windimurra near Mt Magnet and about its subsequent closure and dismantling.

Claims had been made by Mr Roderick Smith, Executive Director of PMA about the motives of the mine's owner, Xstrata. PMA was the previous owner of the relevant tenement and had sold its interests to Xstrata in consideration of an on-going royalty. Following the closure of the mine, PMA commenced legal proceedings against Xstrata in the New South Wales Supreme Court.

PMA's claims included allegations that the mine was viable in the medium and long term, but that Xstrata nevertheless closed the mine in order to promote its shareholders' wider interests. It was alleged, among other things, that Xstrata was attempting to influence the world price for vanadium by restricting supply. It was also alleged that Xstrata dismantled the mine's plant and sold it to a subsidiary company in a manner that made it difficult and expensive for any other entity to re-open the mine.

The State of Western Australia had reportedly invested over \$30 million for infrastructure development in support of the mine.

In June 2004, the Legislative Assembly's Economics and Industry Standing Committee commenced an inquiry into Vanadium Resources at Windimurra, which dealt in large part with the closure of the mine. The arrangements made by Xstrata for decommissioning the mine were, among other matters, the subject of the EISC inquiry.

2.2 Conduct of the Economics and Industry Standing Committee's Inquiry into Vanadium Resources at Windimurra

At a meeting of the EISC held on 30 June 2004, it was resolved to hold an inquiry into:

- (a) the scale and type of public and private infrastructure investment into vanadium mining at Windimurra;
- (b) operations of the mine and plant since establishment;
- (c) conditions leading to mine and plant closure;
- (d) the arrangements by Xstrata Alloys for the decommissioning of the mine and dismantling and sale of the plant;
- (e) statutory or policy reform to protect the State's mineral resources and their potential development; and
- (f) any other matters considered relevant by the Committee.

As the final report of the EISC revealed, the Committee was concerned that a globalised mining company could promote the interests of private shareholders in international mining companies at the expense of Western Australians in general, despite State and local government investment.

The EISC received 12 submissions including representations from both PMA and Xstrata. The EISC also undertook site visits and heard evidence from, among others, representatives of both PMA and Xstrata.

The recommendations made by the EISC related in large part to legislative amendments to the Western Australian *Mining Act 1978* to protect the State's interests from exposure to the risks associated with the resources industry.

In its final report, the EISC made 23 findings in relation to its inquiry, a number of which were critical of the actions of Xstrata throughout its tenure as operator of the mine.

2.3 Chronology of events

The PPC has received documentary evidence that indicates that PMA, a key stakeholder, had inappropriate access to a copy of the Chair's Draft Report to which it made significant amendments.

Below are chronological excerpts from the principal documentary evidence relative to this inquiry. While the PPC has received additional documentation to that within the Table below, it has summarised the key correspondence between the relevant individuals and events:

Table 2.1**The sequence of events prior to and following the unauthorised release of the Chair's Draft Report**

Date	Document
17 June 2004	<p>Correspondence between Mr Roderick Smith and Mr Grill demonstrates that PMA failed in an attempt to buy-back a mill that had been decommissioned at the Windimurra site. Mr Grill suggested to Mr Roderick Smith that he should directly contact Mr Bowler to discuss the potential for Ministerial intervention in respect of the sale of the plant and possible legislative change. The correspondence indicates that Mr Bowler advised Mr Roderick Smith he had spoken to the Minister, Hon Clive Brown, who suggested a Committee inquiry.</p> <p>Mr Bowler emailed Mr Grill to confirm he had indeed raised the Windimurra issue with the Minister who proposed a Committee inquiry rather than legislation. Mr Bowler's email also indicates Mr McRae agreed in front of the Minister to conduct an inquiry.</p> <p>Mr Grill responded to Mr Bowler that it "could be an excellent outcome".</p> <p>Mr Grill advised Mr Smith that the Chairman of the Committee "Tony McRae is a friend of ours and should do a good job". Mr Grill further advised Mr Roderick Smith to prepare "a good set of briefing notes and a list of possible questions".</p>
28 June 2004	<p>Mr Roderick Smith emailed Mr McRae to "applaud [his] decision to proceed with an inquiry...". Mr Smith commented that "Xstrata are capable of acting deceptively and I have no doubt they will give careful attention to their submissions to your inquiry".</p>
30 June 2004	<p>EISC resolved to conduct the Inquiry into Vanadium Resources at Windimurra</p> <p>Mr McRae emailed Mr Roderick Smith to thank him for his email of 28 June 2004 and to advise him that the EISC had resolved to conduct the inquiry.</p>
11 August 2004	<p>Mr Roderick Smith gave evidence to the EISC.</p>
25 August 2004	<p>Mr Grill emailed Mr Roderick Smith suggesting it would be in his interest to attend a fundraising event for the ALP Riverton Election Campaign.</p>
26 August 2004	<p>Mr Roderick Smith emailed a copy of PMA's response to the evidence given to the EISC by Xstrata to Mr Brian Burke and Mr Grill for comment.</p> <p>Mr Burke further proposed to Mr Grill that "we forward [PMA's response] to the committee for its use".</p>
1 September 2004	<p>Mr Roderick Smith attended the ALP Riverton Election Campaign fundraising event.</p>

Date	Document
22 September 2004	Mr Roderick Smith gave further evidence to the EISC.
29 October 2004	<p>The Principal Research Officer emailed the Chair's Draft Report to all members of the EISC at 4.39 pm with the 'track changes' function switched on.³ The email contained a standard warning in the second paragraph:</p> <p style="text-align: center;"><i>As you should be aware, the report is subject to parliamentary privilege. Disclosure of the document to any member or other person who is not a member of the Committee or an officer of the Legislative Assembly may constitute a contempt of the Legislative Assembly.</i></p> <p>Mr Bowler forwarded the Principal Research Officer's email directly to Mr Grill at 5.18 pm.</p>
1 November 2004	<p>Mr Grill forwarded Mr Bowler's email and attached Chair's Draft Report to Mr Roderick Smith (copied to Mr Burke) with the comment "it must be handled with the utmost discretion".</p> <p>Mr Burke emailed Mr Roderick Smith and Mr Grill indicating "it may be appropriate to...set out a timetable according to which pressure can be exerted on Xstrata culminating in the tabling of the Committee's report."</p>
3 November 2004	Mr Grill emailed Mr Roderick Smith advising him that "we are running out of time to amend the draft ⁴ ...[and]...it is my understanding that the committee members had not considered the draft report at the time it was given to me".
4 November 2004	Mr Roderick Smith responded to Mr Grill, agreeing that the unconsidered draft "gives us some scope". Mr Roderick Smith faxed to Mr Grill his proposed amendments to the Chair's Draft Report.
5 November 2004	<p>Mr Grill responded to Mr Roderick Smith stating "Hopefully the action that we are taking now shall see a better final result".</p> <p>Mr Grill faxed a nine page document to Mr Bowler containing Mr Roderick Smith's suggested amendments, including a handwritten note stating "we hope that you shall be able to set the matter straight." Mr Grill included the comment that the "draft report is extremely disappointing", suggesting the attached amendments "gives better basis for the recommendations made by the Committee".</p> <p>Mr Roderick Smith emailed Mr Grill a copy of his suggested amendments to the Chair's Draft Report, which he had faxed to Mr Grill on the previous night.</p>

³ 'Track changes' allows multiple users to amend documents and identifies 'user information' in the computer used to make changes.

⁴ The significance of this comment must be considered in the context of the time. That is, November 2004 marked the closing stages of the 36th Parliament prior to the State General Election of February 2005. Incomplete Standing Committee inquiries lapse at the time of prorogation and may only be restored by a motion of the incoming Committee.

Date	Document
8 November 2004	<p>Mr Roderick Smith emailed an amended copy of the Chair's Draft Report to Mr Grill at 4.58 pm.</p> <p>At 5.54 pm Mr Grill forwarded the amended Chair's Draft Report to Mr Bowler with the tracked changes.</p> <p>At 10.14 pm Mr Bowler forwarded by email the amended Chair's Draft Report to Mr McRae.</p>
9 November 2004	<p>Amendments are made to the Chair's Draft Report forwarded by Mr Bowler to Mr McRae on Mr McRae's computer and identified as being made by "MP": the last amendment was made at 12.08 am on 10 November 2004.⁵</p>
10 November 2004	<p>Mr McRae emailed "a slightly strangled revision" of the Chair's Draft Report to the Principal Research Officer at 12.10 am. The draft contained track changes recorded as authored by - 'Smith' dated 8.11.04 and 'MP' dated 9.11.04</p> <p>At 7.45 am the Principal Research Officer opened Chair's Draft Report attached to the email from Mr McRae and at 7.58 am emailed the Clerk Assistant (Committees) expressing concern over a possible breach of privilege.</p> <p>At 9.00 am the EISC met for the first stage of the final adoption of the report.</p> <p>At 10.59 am Mr Roderick Smith emailed a Vanadium Price graph to the Committee mailbox.</p> <p>At 7.15pm Mr Roderick Smith emailed an amended Vanadium Price graph to Mr Bowler.</p> <p>At 7.47 pm Mr Bowler forwarded the amended Vanadium Price graph to the Principal Research Officer for inclusion in the final report.</p> <p>Minutes of EISC Meeting No. 82 indicate the Committee resolved to adopt the Chair's Draft Report as amended and to Table it in the Legislative Assembly on 11 November 2004.</p>
11 November 2004	<p>At approximately 11.00 am Mr McRae tabled the EISC report in the Legislative Assembly.</p> <p>At 3.25 pm Mr Grill emailed Mr Roderick Smith asking whether he was "happy with the Committee report". Mr Roderick Smith responded at 3.33 pm that he was happy with the report and wrote it was "a great last minute save!"</p>

⁵ 9, 10 and 11 November 2004 were the last sittings days of the Legislative Assembly prior to the prorogation of Parliament before the General Election in 2005.

There are a number of facts that have been established using the available documentary evidence.

Table 2.1 reveals that:

- Mr Bowler released the Chair's Draft Report to Mr Grill on 29 October 2004, who then forwarded that draft to Mr Roderick Smith on 1 November 2004 in order that he could make amendments that furthered the interests of his company, PMA.
- Mr Grill received and then forwarded Mr Roderick Smith's amended Chair's Draft Report to Mr Bowler at 5.54 pm on 8 November 2004 with the track changes function switched on.
- Mr Bowler then emailed that copy of the Chair's Draft Report to Mr McRae at 10.14 pm on 8 November 2004. At the time that draft was forwarded to Mr McRae, it contained a number of tracked amendments made by the user identified as 'Smith'.
- Mr McRae forwarded at 12.10 am on 10 November 2004 an amended version of the Chair's Draft Report to the Principal Research Officer. That version of the report contained many 'tracked' alterations. Some of those alterations were the original 'Smith' amendments contained in the 8 November 2004 copy forwarded by Mr Bowler to Mr McRae, while others were made on 9 November on Mr McRae's computer.
- Upon receipt of the Chair's Draft Report from Mr McRae on 10 November 2004, the Principal Research Officer to the EISC noticed the amendments tracked by the identifier 'Smith' and promptly alerted the Clerk Assistant (Committees) of a possible breach of privilege

The Principal Research Officer consolidated all of the amendments into one document which was presented to the EISC without track changes for its deliberation on 10 November 2004.

Mr Bowler has admitted to the PPC that he released the Chair's Draft Report to Mr Grill. Mr Bowler also acknowledged that he was aware of the relationship between Mr Grill and Mr Roderick Smith of PMA and that the amendments he received from Mr Grill on 8 November 2004 were in fact made by Mr Roderick Smith.⁶

Finding 1

Your Committee finds that, without authorisation and ignoring clear warnings not to do so, Mr John Bowler, MLA released the Chair's Draft Report to the Hon. Julian Grill.

The inquiry sought to establish whether other members of the EISC knew that the Chair's Draft Report had been released to Mr Grill or Mr Roderick Smith. There was no evidence that Mr McRae, Mr Day, Mr Masters or Mr Murray had such knowledge.

⁶ Mr John Bowler, MLA, *Transcript of Evidence*, 18 May 2007, pp.2 & 3.

2.4 Financial arrangement between Precious Metals Australia and the Hon. Julian Grill

PMA had in early 2004 appointed Mr Grill to lobby the State Government over the closure of the mine. The arrangement between PMA and Mr Grill was:

*To advise us generally on dealing with the government and the media with a view to preventing the destruction of the Windimurra vanadium mine and causing it to be reopened and operated.*⁷

In April 2004 PMA negotiated a success fee with Mr Grill. Mr Roderick Smith advised the PPC that:

*The arrangement with Mr Grill was a retainer of \$10,000 per month for three months and a success fee of \$250,000 if and when the mine recommenced production.*⁸

The original retainer came to an end in November 2004 when Mr Roderick Smith advised Mr Grill that PMA could not afford to make any further payments. The initial success fee had not then been earned because the mine had not reopened. It was a later arrangement in the following year that brought about a success fee payment from PMA to Mr Grill.

Following Mr Grill's appearance at a CCC hearing on 28 February 2007, media outlets reported that he had received over \$1 million as a success fee following Xstrata and PMA's out of court settlement in 2005. Mr Grill said in evidence that:

*The only sum we ever received was the figure mentioned at the commission (CCC), which I think was \$120 000, plus some additional amount added to that. I think a 10 per cent figure was added to it, which brought it up to about \$133 000.*⁹

The PPC questioned Mr Roderick Smith and Mr Grill as to whether the new success fee, of \$133,000 was negotiated in relation to the outcome of legal proceedings that were being pursued in the NSW Supreme Court and PMA regaining ownership of the tenement. While Mr Grill suggested it was "more based on [PMA] getting the mine back¹⁰", Mr Roderick Smith advised:

*Yes, indirectly it was..... It was not specific, just more along the lines of: "We'll look after you if you assist us and we get an acceptable outcome of some kind." But given that the major activity in 2005 was the litigation, it is reasonable to say that it related at least indirectly to that.*¹¹

Mr Bowler advised the PPC that he was aware that Mr Grill acted for Mr Roderick Smith prior to the commencement of the EISC inquiry. In evidence he stated that:

As it went on, you know, it became obvious that he was pretty, you know, very close to Roderick Smith, more than just someone who could help, you know, helping him. I was

⁷ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, p.2.

⁸ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, p.2.

⁹ Mr Julian Grill, *Transcript of Evidence*, 11 May 2007, p.4.

¹⁰ *Ibid*, p.4.

¹¹ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, pp.3-4.

*aware that he was working for him, I think. I did not know what the financial arrangements were but I expected that he was being paid.*¹²

Finding 2

Your Committee finds that Mr John Bowler, MLA understood that the Hon. Julian Grill was representing Precious Metals Australia Limited's commercial interests.

2.5 Mr Bowler's knowledge of the dispute between PMA and Xstrata

At the time the draft report was distributed, Mr Bowler and other EISC members knew that PMA had instituted civil proceedings against Xstrata in New South Wales in relation to PMA's loss of royalties due to the mine closure. That matter was referred to in the Chair's Draft Report.

Mr Bowler should have realised before releasing the Chair's Draft Report to Mr Grill, that any comment made by Mr Grill or Mr Smith would have been primarily in PMA's interests, and not necessarily impartial. He should have understood that contributions to the Committee from Mr Smith or Mr Grill must be in the public domain and open to scrutiny. Mr Bowler realised, when Mr Smith's suggestions were received, that the amendments were not impartial. In spite of that realisation, he forwarded the amended report to Mr McRae unaltered.

Finding 3

Your Committee finds that Mr John Bowler, MLA, as a member of the Economics and Industry Standing Committee, was aware that Precious Metals Australia had initiated proceedings against Xstrata in the New South Wales Supreme Court prior to the conclusion of the inquiry.

2.6 Distribution and unauthorised release of the Chair's Draft Report

Following the EISC's deliberations on the matters under inquiry, the Committee's staff prepared the Chair's Draft Report, on instruction and in consultation with the Chairman Mr McRae, and Mr Bernie Masters, also a member of the Committee.¹³ Mr McRae gave evidence to the PPC that the Chair's Draft Report was deliberately drafted "relatively conservatively"¹⁴ so as to allow particular elements of it to be debated or negotiated toward more specific findings.

¹² Mr John Bowler, MLA, *Transcript of Evidence*, 18 May 2007, p.17.

¹³ Standing Order 273 of the Legislative Assembly outlines the procedures for the preparation of a Committee's draft report.

¹⁴ Mr Tony McRae, MLA, *Transcript of Evidence*, 23 March 2007, Session 1, p.9

An electronic version of the Chair's Draft Report was sent by email to all members of the EISC by the Principal Research Officer at 4.39 pm on 29 October 2004.

Notwithstanding the PRO's warning in his covering email that disclosure of the document to anyone other than a member of the EISC or its staff may constitute a contempt of the Legislative Assembly, within an hour Mr Bowler had forwarded the email, including the attached Chair's Draft Report, to Mr Grill. In common parlance Mr Bowler, therefore, 'leaked' the Chair's Draft Report.

Clause (2) of Standing Order 271 of the Legislative Assembly states that:

No member of the Committee nor any other person will publish or disclose evidence not taken in public including documentary evidence received by the Committee unless that evidence has been reported to the Assembly or that disclosure has been authorised, on motion, by the Committee.

In evidence to the PPC, all members of the EISC, including Mr Bowler, agreed that Mr Bowler was not given the Committee's authority to provide the Chair's Draft Report to Mr Grill or to any other person.

2.7 Tracked changes in the leaked report

The tracked alterations contained in the electronic version of the Chair's Draft Report returned by Mr Grill to Mr Bowler on 8 November 2004 were a composite, comprising a section in red type, recorded by the computer software as insertions made by 'Smith', and a section in blue, recorded as deletions or additions made by 'MP'. Some of the tracked alterations were verbatim repetitions of the suggestions made by Mr Roderick Smith in the fax dated 5 November 2004 from Mr Grill to Mr Bowler. These were tracked in red type in the electronic document.

The tracking on the electronic version of the Chair's Draft Report sent from Mr Grill to Mr Bowler suggests that Mr Roderick Smith's amendments were typed directly into the document on Mr Roderick Smith's computer. Mr Roderick Smith agreed in evidence to the PPC that he was the person who made the amendments to the Chair's Draft Report, at the suggestion of Mr Grill.¹⁵

It also appears that Mr Roderick Smith's earlier notes were intended to be considered by Mr Bowler for direct inclusion in the Chair's Draft Report. This is demonstrated both by the form of those comments (they were drafted as passages of the report) and by Mr Grill's covering fax message that Mr Roderick Smith's work "reflects a better approach to the matter and gives some better basis for the recommendations made by the Committee".¹⁶

Mr Bowler confirmed that he was aware that the amendments he received from Mr Grill had originated with PMA.¹⁷

¹⁵ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, p.13.

¹⁶ Fax from Mr Julian Grill to Mr John Bowler, 5 November 2004, p.1.

¹⁷ Mr John Bowler, MLA, *Transcript of Evidence*, 23 March 2007, p.3.

Finding 4

Your Committee finds that Mr John Bowler, MLA, understood that the proposed amendments to the Chair's Draft Report received from the Hon. Julian Grill were drafted by Mr Roderick Smith on behalf of Precious Metals Australia.

2.8 Questions over which Members re-worked the Smith amendments

The tracked amendments in the report that was forwarded by Mr McRae to the Principal Research Officer on 10 November 2004 contained sections in red, which all comprised verbatim or near verbatim repetitions of Mr Roderick Smith's original suggestions. In most instances the sections in blue all occurred in places that would have been occupied by the remainder of Mr Roderick Smith's original suggestions had those original suggestions been retained.

In most instances where there are 'MP' alterations to the 'Smith' amendments, the blue typed insertions and deletions represented a position less critical of Xstrata's position, and/or less supportive of PMA's position, than Mr Roderick Smith's original suggested amendments. There was a clear attempt to 'water-down' the report.

The PPC was informed by Parliamentary Information Technology staff that in 2004 'MP' was a standard identifier on laptop computers issued to all members of Parliament. Unless a member altered the laptop's configuration, that identifier would remain as 'MP'.¹⁸

Mr Bowler initially advised the PPC he had not made any amendments to the Chair's Draft Report on the electronic copy.¹⁹ However, at a later hearing Mr Bowler said:

I remember I wanted to water them down. I just - until these questions came up, I had an image of sitting at a computer or a laptop, doing it, cutting them down a bit, and thinking it is still not enough. Whether Tony was there, I do not know.²⁰

When questioned as to who he understood the identifier 'MP' may have referred to, the former Principal Research Officer replied:

In the circumstances I would have assumed that to be Mr McRae..... My recollection is that we used track changes so we would have sent it out to each member with track changes turned on and the reason for that is so we could quickly identify the proposed changes they made and then bring them to the attention of the general committee. I do not recall turning on track changes when I received this document; I think it was already on and it would have had that status from the point when we sent it out.²¹

Evidence indicates that the blue 'MP' amendments were typed on Mr McRae's computer.

¹⁸ Email from Information Technology, Parliamentary Services Department to the Deputy Clerk, 15 May 2007.

¹⁹ Mr John Bowler, MLA, *Transcript of Evidence*, 23 March 2007, p.4.

²⁰ Mr John Bowler, MLA, *Transcript of Evidence*, 18 May 2007, p.9.

²¹ Principal Research Officer, *Transcript of Evidence*, 14 May 2007 (Closed), p.4.

There is however, doubt as to which member physically typed the changes identified as ‘MP’. Neither Mr Bowler nor Mr McRae could recall whether the identifier ‘MP’ in the tracked changes was attributable to them.

The amendments contained in the copy that Mr Bowler forwarded to Mr McRae at 10.14 pm on 8 November 2004 were re-worked on the 9 November 2004 between the time Mr McRae received the draft from Mr Bowler and the time he forwarded it to the Principal Research Officer early on the morning of 10 November 2004 at 12.10 am.

The PPC pressed Mr McRae on whether it was he who had amended the Chair’s Draft Report received from Mr Bowler during a formal evidence hearing, to which he responded:

*I have accepted that I received the document from John Bowler and I have accepted that I forwarded it to the principal research officer. It is quite possible that that was me. I do not remember making those amendments. It is possible.*²²

When questioned about whether other Committee members had seen the tracked amendments prior to the formal meeting on 10 November 2004, Mr McRae stated:

*I said to you previously, and it is still holds true, that I do not ever remember seeing that tracking device with ‘Smith’ on it.*²³

The PPC has established that only the Chairman of the EISC submitted to the Principal Research Officer an electronic copy of the Chair’s Draft Report containing amendments. Evidence from three of the Committee members was they did not participate in changing the electronic draft prior to the formal meeting on 10 November 2004.

Mr Masters submitted a series of notes on paper directly to the Principal Research Officer, and Mr Day and Mr Murray told the PPC they had not submitted amendments prior to the adoption meeting but had debated the Chair’s Draft Report on the day based on their own printed copies.

The PPC also notes the Principal Research Officer’s evidence regarding his opening of the document forwarded to him by Mr McRae:

*I do not recall turning on track changes when I received this document; I think it was already on and it would have had that status from the point when we sent it out.*²⁴

The Principal Research Officer then also said:

*I opened up the document and looked at some of the amendments that were proposed to it. I suppose I was concerned for two reasons: the first is that the track changes function which was being used indicated that changes were made by two different people, one with the identity of “MP” and the other with the identity of “Smith”. The other concern was that the nature of the changes ... was not immediately linkable to the members... ”.*²⁵

²² Mr Tony McRae, MLA, *Transcript of Evidence*, 18 May 2004, p.21.

²³ *Ibid*, p.19

²⁴ Principal Research Officer, *Transcript of Evidence*, 14 May 2007 (Closed), p.4.

²⁵ *Ibid*, p.4.

Finding 5

Your Committee finds that the ‘MP’ modifications to the ‘Smith’ amendments and additional ‘MP’ amendments to the Chair’s Draft Report were made by Mr John Bowler, MLA, or Mr Tony McRae, MLA, or both, and that those amendments were typed on Mr McRae’s computer.

2.9 Whether other Members had knowledge of the origin of the ‘Smith’ amendments

The next question considered by the PPC was whether any member of the EISC other than Mr Bowler knew or suspected that amendments to the Chair’s Draft Report had been drafted by Mr Roderick Smith.

The Committee accepts that Mr Day, Mr Murray and Mr Masters did not have such knowledge. Each denied any knowledge or suspicion that Mr Roderick Smith had been so directly involved. Each said that such information would have been of significance. The Principal Research Officer explained that he consolidated the various amendments to the Chair’s Draft Report before the adoption meeting on 10 November 2004. That consolidation removed the caption “Smith” from the working document.

The electronic version which showed on the screen that insertions had been made by ‘Smith’ was available to be seen by Mr McRae. It was sent to his computer, the modifications were completed on his computer and he forwarded it to the Principal Research Officer.

However, there are several difficulties in drawing the conclusion that Mr McRae noticed the “Smith” caption. First, the caption appeared only if the mouse pointer was held directly over the insertions, and not if the cursor was operated from the direction keys (arrows) on the keyboard. Second, the PPC could not determine from the evidence whether the typing that night was effected by Mr McRae or Mr Bowler. Further, it is unlikely that Mr McRae would have both noticed the “Smith” caption and nevertheless forwarded the document to the Principal Research Officer.

When questioned by the PPC as to whether he was aware that at the time the report was being finalised that the draft had been provided to Mr Grill, Mr McRae responded:

No; I was not aware that it had been provided to Julian Grill. I was aware that I think - I cannot remember whether it was a telephone conversation or email from John Bowler or his electorate office - he had discussed the committee’s report with Julian Grill. ²⁶

Mr Bowler denied that he told Mr McRae that the amendments had been composed by Mr Roderick Smith. He also said that he was acutely aware during debate on 10 November 2004 that the proposed changes, advanced as his, were not known by Committee members to have been drafted by anyone else.

²⁶ Mr Tony McRae, MLA, *Transcript of Evidence*, 23 March 2007, p.3.

At its highest, the circumstantial evidence that Mr McRae knew the origin of the amendments was the circumstance that Mr Bowler probably asked him for help in diluting Mr Bowler's own amendments, which might have struck Mr McRae as unusual. On that basis, Mr Bowler agreed at one point that Mr McRae "must have suspected"²⁷ that the amendments came from a third party. However, there was no direct evidence to support that view.

The Committee makes no finding that any member of the EISC, other than Mr Bowler, were aware that the Chair's Draft Report had been released to Mr Grill or to Mr Roderick Smith, or that amendments advanced by Mr Bowler to Mr McRae were drafted by Mr Roderick Smith.

2.10 Adoption of the report by the Economics and Industry Standing Committee

Before a Committee report is tabled in the Legislative Assembly, members of the Committee participate in a formal adoption process. In recent times, this typically involves Committee staff displaying an electronic version of the Chair's Draft Report on an overhead projector to give members the opportunity to suggest, debate and make final changes to sections of the report until the process is complete. The Principal Research Officer gave evidence that the EISC followed this process on 10 November 2004. Each member of the Committee worked from a hard copy of the draft, and amendments were made on the electronic version shown on the overhead projector.

The EISC's adoption meeting on 10 November 2004 continued from 9.00 am to 6.10 pm (although other minor items were also on its agenda that day).

All former members of the EISC gave evidence that, despite being now told of PMA's role in drafting the amendments submitted by Mr Bowler, they stood by the tabled report, its recommendations and findings.

2.11 Notification of potential breach of privilege

Within 15 minutes of opening the email from Mr McRae (7.45 am), the Principal Research Officer noticed that the tracked changes in the Chair's Draft Report revealed insertions by a person identified as 'Smith'.

The Principal Research Officer described his recollection of the sequence of events on the morning of 10 November 2004 as follows:

I opened up the document and looked at some of the amendments that were proposed in it. I suppose I was concerned for two reasons: the first reason is that the track changes function which was being used indicated the changes were made by two different people, one with the identity of "MP" and the other with the identity of "Smith". The other concern was that the nature of the changes - this is a little more intangible - was not immediately linkable to the members, if that makes any sense. They were different in character, different language - slightly different character, I suppose, is the description.²⁸

²⁷ Mr Bowler, MLA, *Transcript of Evidence*, 18 May 2004, p.11.

²⁸ Principal Research Officer, *Transcript of Evidence*, 14 May 2007 (Closed), p.4.

The Principal Research Officer then emailed the Clerk Assistant (Committees) of the Legislative Assembly at 7.58 am, a message expressing his concern about a possible “breach of privilege”.²⁹ The email from the Principal Research Officer referred to the possibility that ‘Smith’ may be one of the stakeholders who had made submissions to the inquiry.

The Principal Research Officer was advised by the Clerk Assistant (Committees) to continue with the adoption meeting, which commenced at 9.00 am as planned, until further advice could be obtained from the Clerk of the Legislative Assembly (the Clerk). The Principal Research Officer recalled that:

At some stage during the morning of where we had the committee meeting, I took a phone call from [the Clerk Assistant] who was relaying advice from the Clerk, and that advice was basically to proceed as normal. My understanding of the motivation for that advice is because we could not definitively identify who had made the changes, so in that sense we could not prove that the confidentiality of the document had been breached, and, as such, we should assume that they were changes suggested by the chair and proceed accordingly.³⁰

The advice from the Clerk was to continue with the adoption process as planned and not to advise the members of the Committee. No member could recall any mention of the matter at the time, including Mr Bowler, for whom any such mention would certainly have been memorable.

The Principal Research Officer followed the correct procedure by alerting the Clerk to the suspected breach of privilege. However, the PPC believes the advice given by the Clerk to the Principal Research Officer was incorrect.

The Clerk should have reported the suspected breach to the Presiding Officer at the earliest possible time. The PPC believe that had this occurred, the matter may have been addressed by the Presiding Officer directly, as it is ultimately for the Presiding Officer to determine how to proceed with matters such as these.

In particular, it is important to the functioning of the Parliament that responsibility for decisions in respect of contempt of Parliament rests with elected members, through the Presiding Officer.

Finding 6

Your Committee finds that the decision by the Clerk of the Legislative Assembly in November 2004, not to draw the Presiding Officer’s attention to the suspected unauthorised release of a Committee document, was an error in judgement.

2.12 The Hon. Julian Grill

Mr Julian Grill is an experienced former parliamentarian, as demonstrated by his service record in the Legislative Assembly:

²⁹ Email from the Principal Research Officer to the Clerk Assistant (Committees), 10 November 2004.

³⁰ Principal Research Officer, *Transcript of Evidence*, 14 May 2007 (Closed), p.5.

- Member of the Legislative Assembly 1977 to 2001;
- Minister 1983 to 1990;
- Member of the Public Accounts Committee 1981;
- Chairman, Select Committee on Country Hospitals 1990 to 1992; and
- Member, Select Committee on Petroleum Pricing 2000.

The PPC believes Mr Grill's experience as a parliamentarian means he would have known it was improper to have access to a draft Committee report. This was further confirmed when Mr Grill gave evidence to the PPC.

When Mr Grill was asked whether he knew the consequences of Mr Bowler's actions in forwarding the Chair's Draft Report to him, he answered:

*Did I understand the ramifications? Yes, I did.*³¹

When Mr Grill was asked if he advised Mr Bowler that he should not have sent it to him, he answered:

*Well, he just sent it to me out of the blue, as I already indicated. Did I then go back to him and ask – tell him? No, I did not.*³²

When asked if the report (email) contained a warning about parliamentary privilege, he replied:

*Yes, it did.*³³

When Mr Grill forwarded the email and attached Chair's Draft Report to Mr Roderick Smith with his advice that the report "*must be handled with the utmost discretion*"³⁴ he confirmed his awareness that it was improper.

When giving evidence to the PPC, Mr Roderick Smith agreed that he had received an email forwarded by Mr Grill at 9.25 am on 1 November 2004 with a note saying that the Chair's Draft Report should be "treated with the utmost discretion".

When asked if, after receiving the Chair's Draft Report, he had read the warning about parliamentary privilege or if Mr Grill had warned him about the implications of parliamentary privilege, Mr Roderick Smith responded in the negative.

Mr Roderick Smith received the document in circumstances where Mr Grill and Mr Bowler knowingly breached parliamentary privilege to forward it to him.

The PPC believes the actions of Mr Grill and Mr Bowler were unacceptable and placed Mr Roderick Smith in a position where he had access to a document to which he was not entitled. The Committee understands that Mr Roderick Smith did not solicit or further distribute that draft.

³¹ Mr Julian Grill, *Transcript of Evidence*, 11 May 2007, p.8

³² *ibid*

³³ *Ibid.*

³⁴ Email 1/11/04 5.56 am - Mr Grill to Mr Smith (copied to Mr Burke).

If Mr Roderick Smith had chosen to further distribute the Chair's Draft Report in a manner which compromised the workings of the Committee, he too may have been open to a finding of contempt of parliament.

The PPC takes this opportunity to strongly remind all citizens of the seriousness of breaching parliamentary privilege.

Finding 7

Your Committee finds that the Hon. Julian Grill forwarded the Chair's Draft Report onto his client Mr Roderick Smith of Precious Metals Australia, who had a direct interest in the outcome of the Committee's inquiry. This was done in full knowledge of the ramifications of doing so and despite the written disclosure warning in the email.

CHAPTER 3 FUNDRAISING ISSUES

3.1 Background

Throughout the PPC's current inquiry, a number of additional issues arose that the Committee considered required attention, in particular Mr Roderick Smith's attendance at a political fundraiser for the ALP Riverton Election Campaign, and donations made by Mr Grill to the election campaigns of both Mr Bowler and Mr McRae, and by PMA to the election campaign of Mr Bowler.

3.2 Mr Roderick Smith's attendance at a fundraising event for the ALP Riverton Election Campaign

Mr Roderick Smith attended a fundraising event on 1 September 2004 for the 2005 ALP Riverton Election Campaign. The event was a dinner held at a Perth restaurant at which a number of Government Ministers were in attendance to support the election campaign fundraising.

An invitation to the function was sent to Mr Grill. Mr Grill emailed Mr Roderick Smith on 25 August 2004 suggesting it would be in Mr Roderick Smith's interest to attend (refer Table 2.1 at p.5). Mr Roderick Smith did attend the dinner, and purchased tickets for 6 people on Mr Grill's table for a total price of \$1,650.³⁵

Mr McRae became aware sometime during 1 September 2004 that Mr Roderick Smith was to attend the function that night: a member of Mr McRae's campaign staff told him that Mr Roderick Smith had asked for a seat at the same table as the Minister for State Development, the Hon. Clive Brown. While Mr McRae declined to arrange that seating, he did not attempt to dissuade Mr Roderick Smith from attending and contributing to the fundraiser.

When questioned as to whether he considered it was appropriate that Mr Roderick Smith attended the Riverton election campaign fundraising event, Mr McRae stated:

I think it risks putting me and Smith, and, indeed, lots of people, under some apprehension that there might be some special lobbying going on. I do not think it is what I would design. If I had my preferences, Mr Smith would not have attended. Indeed, I recall saying when told on the day of the function, that Smith would not have whoever he wanted sitting at his table; so I was aware of that sensitivity.³⁶

Mr McRae indicated that he wanted to ensure that Mr Roderick Smith was not seated with the Minister for State Development because he "...was aware of that sensitivity".

Mr Roderick Smith told the inquiry that:

Mr McRae came around to each of the tables to make a point of shaking everyone's hands, and he actually gestured and said, "We can't speak", or something of the such. "Nice to hear you're here", and I complimented him on the speech he had given ... and that was the extent of the

³⁵ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, p.5.

³⁶ Mr Tony McRae MLA, *Transcript of Evidence*, 18 May 2007, p.7.

conversation, and I do not recall speaking to Mr Bowler at all. I certainly did not discuss the inquiry with he or anyone else.”³⁷

Mr Roderick Smith gave evidence to the EISC inquiry on 11 August 2004, prior to the fundraising event, and Mr Roderick Smith appeared again on 22 September 2004. The central concern is that Mr Roderick Smith’s attendance at the function, and his obligation to pay money to the ALP Riverton Election Campaign fund, occurred during the EISC’s inquiry, which inquiry directly concerned the commercial interests of PMA.

While the evidence showed that Mr McRae was sensitive to the seating arrangements, and to the propriety of discussing the inquiry with Mr Roderick Smith on the night of the function, he did not in his evidence show any awareness of that central issue.

3.3 Donations to the ALP Election Campaigns for the seats of Murchison-Eyre and Riverton

(a) Murchison-Eyre

Funds were received by the ALP Murchison-Eyre Election Campaign fund for the 2005 election from Mr Roderick Smith.

Mr Roderick Smith gave a cheque for \$3,000 to Mr Grill, on the understanding it would be paid to Mr Bowler’s campaign fund. The PPC questioned Mr Roderick Smith about the donation he made to Mr Bowler’s election campaign and the manner in which it was made and was told:

Julian Grill...had asked me to make a donation, and he had said he was campaign manager or fundraiser, or something of that nature, for the Murchison-Eyre election.....I believe it went to Mr Grill and I knew that he intended to contribute it to the Murchison-Eyre fund.³⁸

Mr Bowler’s evidence to the PPC indicates he was not aware at the time that the donations had been made because his campaign was run by his two campaign managers, Mr Grill and Mr Bowler’s Electorate Officer.

The PPC questioned Mr Bowler as to whether he considered it had been appropriate to seek financial support from the person who had a financial interest in the EISC inquiry, to which he advised:

I found out subsequently that I received \$2 000 via Julian Grill from Roderick Smith.....I did not seek it.³⁹

Mr Grill, with Mr Burke, also made a donation to Mr Bowler’s election campaign fund.

³⁷ Mr Roderick Smith, *Transcript of Evidence*, 18 March 2007, p.7.

³⁸ Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, pp.19-20.

³⁹ Mr John Bowler MLA, *Transcript of Evidence*, 18 May 2007, pp.15-16.

(b) Riverton

Documentation provided to the PPC indicates Mr McRae intended to contact Mr Roderick Smith to ask for a direct contribution to the ALP Riverton Campaign.⁴⁰ Mr McRae said that he could not recall whether he in fact made that request.⁴¹

However, Mr Roderick Smith gave clear evidence that such a request was made. Mr Roderick Smith did not make the contribution⁴².

The PPC asked Mr McRae whether he considered it was appropriate for a Committee Chairman to seek monetary donations from a person who had recently had a financial interest in the outcome of that Committee's inquiry, to which Mr McRae responded:

*You are making the link in your mind; that was not in my mind. As I am sure you know, ...campaign fundraising means that you ask everybody that you have ever come into contact with or might be a support.*⁴³

Mr Grill and Mr Burke also contributed to Mr McRae's campaign fund.⁴⁴

3.4 PPC Comment

The above matters raise several related issues.

First, the attendance of Mr Roderick Smith at the Riverton election campaign fundraising event was inappropriate. It was inappropriate that a person whose financial interests maybe affected by the inquiry should be asked to contribute to the re-election campaign fund-raiser for the Chairman during the inquiry. That had the potential to create in the mind of the Chairman a sense of obligation or gratitude inconsistent with his duty to impartially participate in the inquiry.

Mr Roderick Smith's attendance also creates the perception of undue or improper influence on the Chairman, whether or not actual influence arose.

The PPC accepts that Mr McRae did not solicit Mr Roderick Smith's attendance at the event and that it was Mr Grill who initiated the invitation. However, he was aware of Mr Roderick Smith's proposed attendance in sufficient time to attempt to prevent his attendance and any financial contribution.

Second, the requests to Mr Roderick Smith for contributions to campaign funds were inappropriate. The circumstances give rise to the inference, and the perception, that the requests were made on account of the inquiry's favourable outcome for PMA.

The Parliament's committee processes should not be attended by any expectation or perception that a favourable outcome results in a request for a campaign donation. It is no defence that the request occurred after the report had been tabled. The crucial impropriety lies in the perception that the request is related to the outcome of the inquiry.

⁴⁰ Email correspondence between Mr McRae MLA and Mr Grill dated 7 January 2005.

⁴¹ Mr Tony McRae MLA, *Transcript of Evidence*, 18 May 2007, p.10.

⁴² Mr Roderick Smith, *Transcript of Evidence*, 18 May 2007, p.18.

⁴³ Mr Tony McRae MLA, *Transcript of Evidence*, 18 May 2007, pp.10-11.

⁴⁴ Mr Julian Grill, *Transcript of Evidence*, 11 May 2007, p.21.

Third, Mr Roderick Smith was asked by Mr Grill, not by Mr Bowler, to contribute to Mr Bowler's election campaign fund. However, the perception and the impropriety are not diminished by such indirect requests.

Fourth, in this case, Mr Grill was a lobbyist for PMA and directly contributed to the campaign funds of Mr McRae and Mr Bowler. Mr Grill's involvement with those Members was much broader than simply in respect of the EISC's inquiry. That may reduce the perception that his donation was related to the favourable outcome for PMA. Nevertheless, in principle, donations by a lobbyist to a Committee member proximate to a Committee inquiry in which the lobbyist was active are a cause for concern.

The difficulty is enlarged by the circumstance, as occurred in Mr Bowler's case, that one person, Mr Grill, was a lobbyist for PMA and a campaign manager for Mr Bowler.

Each of these matters contributed in varying degrees to impairing the capacity of the Parliament to function effectively through its Committee system.

Finding 8

Your Committee finds that Mr Roderick Smith was requested by the Hon. Julian Grill to contribute money to the ALP Riverton Election Campaign fund, by attending a fund-raising dinner, hosted by Mr Tony McRae, MLA, during the Economics and Industry Standing Committee's inquiry. Mr McRae failed to rescind that request, despite having an opportunity to do so. This was aggravated in January 2005 by Mr McRae's request for a campaign donation from Mr Roderick Smith.

CHAPTER 4 UNAUTHORISED DISCLOSURE

4.1 Principles behind prohibition of disclosure

Western Australia inherited the immunities, rights and privileges of the United Kingdom House of Commons and they now apply as they stood in the UK as at 1 January 1989. Among those is the right to deal with contempt of Parliament.

Erskine May's *Parliamentary Practice* notes -

*Any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent for the offence.*⁴⁵

From as early as the 17th century, the House of Commons has regarded it as a constructive contempt to prematurely disclose committee proceedings, which includes disclosing a draft report.

The broad principle behind the prohibition on disclosure of a draft report is that Committee members must be free to argue points of view in a robust and forthright manner, and to change views dependent on the evidence they receive and the weight of arguments put to them. Members must feel free to canvass the full range of options before them.

The reason it is considered to be a possible contempt of the Parliament to disclose a draft report to a third party is that disclosure may prejudice the proper functioning of the Parliament, which includes its committees. The proper functioning may be prejudiced in many ways.

Unauthorised disclosure may cause members of Committees embarrassment about internal disagreement, about particular views or about changes of view. The possibility of disclosure is likely to diminish the robust exchange of views that is a great strength of the Committee system.

There is a trust built up between Committee members on the basis of this prohibition. Breach of that trust has broader effects than any particular harm which comes from any specific breach. Members on all committees will be concerned about the extent to which their deliberations are being relayed to others. The public is highly likely to be concerned about who has special access to the Parliament's system of inquiry that is denied to others.

4.2 Specific concerns

The PPC considers that the actions of Mr Bowler represent a serious breach of process and trust. In order to prevent such instances occurring in future it is necessary to reinforce the principles behind the processes designed to protect members' capacity to carry out their business in a free and frank manner.

Members source information for debates and amendments in the House and in committee from a broad range of areas. They are not required to say who has drafted those amendments or helped them form their views. In this case however, the PPC believes that other members of the EISC were entitled to expect that if Mr Bowler brought to the Committee the written views of an

⁴⁵ Erskine May's *Parliamentary Practice* 21st Ed., 1990, p. 115

interested party to the inquiry, especially in the form of proposed amendments to the report, he should have made that clear. It is likely that the proposed amendments would have been scrutinised more closely if the other members were aware of their source.

Each member of the EISC gave evidence that he was confident that the final report reflected the evidence and that its findings and recommendations remain valid. Each reaffirmed complete confidence in the report.

Mr Bowler contends that throughout the EISC inquiry, foremost in his mind were the best interests of the people of Western Australia in general, and the mining industry specifically.

The risk to the proper workings of the EISC was real. Mr Bowler could not have been confident that the Chair's Draft Report would not be given by Mr Grill to his client Mr Roderick Smith, or that some other person to whom the report was in turn disclosed, would not use the draft in a manner prejudicial to the EISC or other key stakeholders.

The inclusion in a Chair's Draft Report of passages initially written by an interested party to, and witness in any Committee Inquiry, without other members knowing the source is a direct prejudice to the workings of that Committee.

Mr Bowler has provided a frank account of his recollections of the time in question and has cooperated with all PPC requests to provide evidence, both documentary and oral, throughout the Committee hearing process.

4.3 Effects of unauthorised disclosure

Although this Committee considers Mr Bowler's unauthorised disclosure of the Chair's Draft Report has had several effects, it is difficult to quantify the extent of those effects.

In particular, the Committee considers the actions of Mr Bowler in particular have:

- diminished the standing of Legislative Assembly Committees;
- diminished the standing of the Legislative Assembly;
- reduced confidence of the public in the capacity of the Parliament to undertake its work in a fair and impartial manner; and
- undermined trust in the capacity of individual members to properly represent the people of Western Australia.

Finding 9

Your Committee finds that Mr John Bowler, MLA, was reckless as to whether his actions could have the effect of -

- (a) diminishing the standing of Legislative Assembly Committees;
- (b) diminishing the standing of the Legislative Assembly;
- (c) reducing confidence of the public in the capacity of the Parliament to undertake its work in a fair and impartial manner; and
- (d) undermining the trust in individual members to properly represent the people of Western Australia.

4.4 Action to be taken by the Assembly

After these matters became public, the Premier removed Mr Bowler from Cabinet and Mr Bowler resigned from his political party. There is little doubt that the public revelations have caused Mr Bowler great personal distress and he has expressed feelings of shame and embarrassment. In a statement to the Legislative Assembly on 28 February 2007, Mr Bowler apologised to the Members of the EISC, to all members of Parliament and to his electors in the seat of Murchison-Eyre.⁴⁶

In giving evidence to the Procedure and Privileges Committee, Mr Bowler indicated his understanding of the impropriety of his actions.

It is proposed that action against Mr Bowler be taken with the aim of protecting the functioning of the Parliament and its Committee system. As part of that action we consider it important on this occasion that the House record its view of the effects of Mr Bowler's actions and then suspend him from the service of the House to make it clear to members and the public that the House will act to protect its processes.

⁴⁶ *Parliamentary Debates*, 28 February 2007, p.118.

Recommendation 1

Your Committee recommends –

The Legislative Assembly -

- (a) find the Member for Murchison-Eyre guilty of contempt of the Legislative Assembly in that he deliberately disclosed confidential proceedings of the Economics and Industry Standing Committee by releasing a Chair's Draft Report without authorisation;
- (b) note that the contempt is aggravated because the Member for Murchison-Eyre knew:
 - (i) that the premature release would directly advantage a personal friend, the Hon. Julian Grill; and
 - (ii) would significantly affect the commercial interests of two companies operating in Western Australia, namely Precious Metals Australia and Xstrata;
- (c) strongly censure the Member for Murchison-Eyre for his actions which have diminished public trust in Parliamentary institutions and processes;
- (d) disqualify the Member for Murchison-Eyre from membership of any Parliamentary Committee for the remainder of the 37th Parliament;
- (e) suspend the Member for Murchison-Eyre from the service of the House for a period of 7 sitting weeks or 21 sitting days, whichever is the longer; and
- (f) direct the Member for Murchison-Eyre not to enter the parliamentary precincts until the suspension period in paragraph (e) has expired.

Recommendation 2

Your Committee recommends that the Hon. Julian Grill be found in contempt of Parliament, by reason of his actions of forwarding the Chair's Draft Report to Mr Roderick Smith.

Recommendation 3

Your Committee recommends that the Member for Riverton be given the opportunity to apologise to the House for potentially diminishing public trust in Parliamentary institutions and processes through his failure as Chairman and member of the Economics and Industry Standing Committee to ensure that Mr Roderick Smith did not attend the ALP Riverton Election Campaign fundraising event as a paying participant during that Committee's inquiry.

4.5 Further matters for consideration

The PPC has also given consideration to the financial penalty for members who are found guilty of contempt. Standing Order 56 imposes a possible penalty not exceeding one hundred dollars.

It is the view of the PPC that such an amount is not appropriate for such an offence, and as such this Committee will consider an examination of this Standing Order at a later date.

APPENDIX ONE

HEARINGS

Date	Name	Position	Organisation
23 March 2007	Mr Anthony McRae MLA	Former Chairman of the previous Economics and Industry Standing Committee	Parliament
23 March 2007	Hon. John Day MLA	Former Member of the previous Economics and Industry Standing Committee	Parliament
23 March 2007	Mr Mick Murray MLA	Former Member of the previous Economics and Industry Standing Committee	Parliament
23 March 2007	Mr Bernie Masters	Former Member of the previous Economics and Industry Standing Committee	Parliament
23 March 2007	Mr John Bowler MLA	Former Member of the previous Economics and Industry Standing Committee	Parliament
11 May 2007	Hon Julian Grill		
14 May 2007	Closed evidence	Former Principal Research Officer of the previous Economics and Industry Standing Committee	Parliament
18 May 2007	Mr Roderick Smith		Precious Metals Australia
18 May 2007	Mr John Bowler MLA	Former Member of the previous Economics and Industry Standing Committee	Parliament
18 May 2007	Mr Anthony McRae MLA	Former Chairman of the previous Economics and Industry Standing Committee	Parliament