



# ***PROCEDURE AND PRIVILEGES COMMITTEE***

## **PROCEDURE AND PRIVILEGES COMMITTEE'S RESPONSE TO MATTERS RAISED IN CORRUPTION AND CRIME COMMISSION REPORTS REFERRED UNDER 27A OF THE CCC ACT**

### **Report No.1 2008 (38<sup>th</sup> Parliament)**

Presented by:  
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Deputy Speaker of the Legislative Assembly  
on 4 December 2008

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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 -

- (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 Legislative Assembly; and
  - (b) examine and report on issues of privilege; and
  - (c) wherever necessary, confer with a similar committee of the Council.
- (3) Membership of the committee will consist of the Speaker and four other members as the Legislative 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.





## ABBREVIATIONS AND ACRONYMS

CCC	The Corruption and Crime Commission
CCC Act, the	<i>Corruption and Crime Commission Act 2003</i>
PPC	Procedure and Privileges Committee

PROCEDURE AND PRIVILEGES COMMITTEE

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## CHAPTER 1 INTRODUCTION

### 1.1 Background to report

Under the provisions of section 27A of *Corruption and Crime Commission Act 2003*, the Corruption and Crime Commission (CCC) referred two matters to the Procedure and Privileges Committee (PPC) of the Legislative Assembly during the thirty-seventh Parliament.<sup>1</sup> The reports that resulted from those matters were:

*Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly: Inquiry Conducted into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA* (Report No. 5, 2008)

and

*Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly: Report on Issues Relating to Record Keeping in the Ministerial Office of the Hon John James Mansell Bowler MLA* (Report No. 7, 2008).

Those reports were tabled on 10 June and 6 November 2008 respectively.

Technically, the reports were undertaken for the PPC but for all practical purposes, they are the reports of the CCC with no input from the PPC.

This report responds to the issues raised by the recommendations and other issues arising from the abovementioned CCC reports, despite the reports being the result of referrals by the previous PPC.

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<sup>1</sup> Section 27A of the *Corruption and Crime Commission Act 2003* (the CCC Act) requires that if an allegation of misconduct, not being serious misconduct, is made against a member of the Legislative Assembly or Legislative Council, the matter must be referred by the CCC to the presiding officer, who must then refer the matter to the PPC of the House concerned. If the PPC then decides that the matter warrants investigation, it must direct the CCC to investigate on the PPC's behalf.



## CHAPTER 2 ISSUES ARISING FROM REPORT NO. 5, 2008

In its discussion of possible misconduct allegations against the members who were the subject of Report No. 5, 2008, *Inquiry Conducted into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA*, the CCC delivered two recommendations to the Legislative Assembly:

### *Recommendation 1*

*It is recommended that consideration be given to formulating a procedure for the disclosure of approaches made to committee members by those wishing the member to take a particular position in respect of a matter which is before the committee or may come before it for consideration or a decision. Such disclosure would assist in ensuring that the significant powers of committees are not improperly used for the purpose of advancing private interests. Disclosure requirements should include the name of the person who made the approach, the interest that they represented and the position that they advocated. It would be desirable if disclosures were made at the commencement of each meeting and recorded in the minutes.<sup>2</sup>*

and

### *Recommendation 2*

*It is recommended that consideration be given to formulating guidelines for the drafting of motions by Members, specifically that Members should be cautious about accepting the assistance of lobbyists in this regard, given that the interest of the lobbyist or their client may not be revealed or be readily apparent. Members should exercise care in ensuring that they do not become either the willing or unwitting instrument for advancing private interests. Members should also consider whether if assistance in drafting a motion is received it may be appropriate to disclose that fact.<sup>3</sup>*

In relation to the discussion of the Members' conduct, the PPC makes no comment, except to note that no recommendations regarding misconduct were put forward by the CCC.

## 2.1 Response to Recommendation 1

In making this recommendation it seems the CCC has not fully considered the effect that disclosing and minuting such lobbying might have on the ability of a member to perform his or her functions as a member of Parliament or a member of a committee. The recording of approaches made to committee members is impractical and would be unlikely to have the desired effect of deterring lobbyists from making unethical suggestions to MPs. Members of the Legislative Assembly are constantly being lobbied by people with specific monetary or other interests. While Members may not be aware of the specific motivations of lobbyists, they must determine for themselves whether they wish to take up a particular position on behalf of their constituents, whether presented to them by a lobbyist or any other person. It is the Member alone

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<sup>2</sup> Corruption and Crime Commission Report on Behalf of the Procedure and Privileges Committee of the Legislative Assembly, *Inquiry Conducted into Alleged Misconduct by Mr John Edwin McGrath MLA, Mr John Robert Quigley MLA and Mr Benjamin Sana Wyatt MLA*, Report No. 5, 2008, Perth, p53.

<sup>3</sup> *Ibid*, p73.

who must take responsibility for the advice they act upon, the circumstances in which they act upon it, and the consequences of taking such advice.

The view of the PPC is that it is not lobbying that is at issue, but how Members exercise their judgement in relation to such lobbying. The PPC holds that this is not a matter especially for it the Committee, but is rather for members to determine.

The PPC considers that sections 2 and 3 of the *Code of Conduct for Members of the Legislative Assembly*<sup>4</sup>, which deal with conduct and disclosure of conflict of interest, adequately provide a guide to members as to their proper response to lobbyists. The CCC itself notes in its report that:

*Part of an elected Member's job is to be lobbied by their constituents, whether they are professional lobbyists or ordinary citizens. The right to influence government decisions is a fundamental tenet underpinning our system of government and a form of political participation that helps make "the wheels of government" turn. When managed according to "the public interest", lobbying has not only a legitimate but also an important role to play in the democratic process.*<sup>5</sup>

Disclosing contact with lobbyists may well act as a deterrent for Members seeking a wide range of opinion on an issue, if the lobbyists are perceived to represent extreme or unpopular views. Furthermore, if a Member decided to act improperly, the requirement to disclose would not preclude the Member from improper action.

It is noted that the Government is likely to introduce lobbyists' legislation. It is also noted that the Speaker and the Clerk are arranging for an ethics seminar for MLAs to be held in March 2009. At the least these two events will direct members' minds to some of the ethical issues that need to be considered from time to time.

## 2.2 Response to Recommendation 2

As outlined above, Members must use their judgement when seeking assistance to draft motions. It is imperative for the proper functioning of Parliament that Members be free to represent their electorate in the manner they see fit, including getting assistance to draft motions or other statements as appropriate.

The PPC believes it would be cumbersome to require Members to divulge when they have been assisted to draft motions. A broad range of people may have had input into this process, as is proper, and the divulgence of sources of advice presents the risk that the sources of advice become the target of debate rather than the content of motions as put to the House. Again, it is noted that the Government is likely to introduce lobbyists' legislation in the future.

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<sup>4</sup> Adopted by the Legislative Assembly on 28 August 2003, *Votes and Proceedings* p776.

<sup>5</sup> *Ibid.*, p44.

### **2.3 Response to other issues raised in the report**

The PPC may respond further to matters raised in Report No. 5, 2008 in relation to the general principles and operation of sections 27A and 27B of the CCC Act in a future report.





## **CHAPTER 3 ISSUES ARISING FROM REPORT NO. 7, 2008**

The matters discussed in Report No. 7, 2008, *Report on Issues Relating to Record Keeping in the Ministerial Office of the Hon John James Mansell Bowler MLA* concern Mr Bowler's conduct as a Minister rather than as a Member of the Legislative Assembly. The current PPC, like its predecessor, has grave concerns that it should be involved in allegations involving members in their Ministerial capacity, or in Members' electorate offices, when the matter does not involve the members' actions in the Legislative Assembly or its committees. This is one area of concern in the CCC Act, and the PPC is of the view that the Act requires amendment to remove the involvement of the PPC in such cases.

The conduct described in the report is outside the normal jurisdiction of the PPC, as Mr Bowler's activities were in relation to his ministerial office, not his actions in the House or its committees. The PPC therefore makes no comment on those matters.

HON. GRANT WOODHAMS, MLA  
CHAIRMAN OF THE COMMITTEE  
4 December 2008