



PROCEDURE AND PRIVILEGES COMMITTEE

**MATTERS ARISING FROM THE
CORRUPTION AND CRIME COMMISSION
REPORT TABLED IN THE LEGISLATIVE
ASSEMBLY ON 16 NOVEMBER 2009**

**Report No. 7
in the 38th Parliament**

2009

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MATTERS ARISING FROM THE CORRUPTION AND CRIME COMMISSION REPORT TABLED IN THE LEGISLATIVE ASSEMBLY ON 16 NOVEMBER 2009

Report No. 7

Presented by:
Mr Michael Sutherland, MLA
Laid on the Table of the Legislative Assembly
on 25 November 2009

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Principal Research Officer	Dr Julia Lawrinson, BA (Hons), PhD
Advisers	Mr Peter McHugh, Clerk of the Legislative Assembly Mr John Mandy Deputy Clerk of the Legislative Assembly

COMMITTEE ADDRESS

Procedure and Privileges Committee
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7494
Fax: (08) 9222 7804
Email: lappc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

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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 session 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.

1.1 Background

On 16 November 2009 the Corruption and Crime Commission released its *Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: A Ministerial Decision in Relation to Applications for a Mining Tenement at Yeelirrie* ('the report'). The report contained the opinion that Mr Bowler's actions, as described in the report, 'constituted serious misconduct within the meaning of section 4(a) and (b) of the Corruption and Crime Commission Act 2003'.¹

On 17 November 2009 the Legislative Assembly passed a motion in the following terms:

That the Corruption and Crime Commission *Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: A Ministerial Decision in Relation to Applications for a Mining Tenement at Yeelirrie*, tabled in the Legislative Assembly on Monday 16 November 2009, be referred to the Procedure and Privileges Committee for consideration as to what action, in any, can be taken by the House in relation to the report.

1.2 Action available to the House

By way of preliminary remarks, the Committee states that as a result of the reference provided by the House, it makes no judgement on the actions of the Member for Kalgoorlie. Nor is it the function of the Committee to review the Corruption and Crime Commission report. The Committee's response is limited to a 'consideration as to what action, if any, can be taken by the House in relation to the report.'

The matters arising from the report concern the activities of the (now) Member for Kalgoorlie in his former role as Minister for Resources. The matters do not concern the Member for Kalgoorlie's actions in relation to the House or its committees. The Member's actions do not constitute a contempt of the Legislative Assembly, or a breach of privilege. As a result, the Legislative Assembly has no capacity to fine the Member, as his actions do not constitute contempt under section 8 of the Parliamentary Privileges Act 1891, and are not captured in Standing Orders 55 and 56. Therefore, the penalties available to the Legislative Assembly are limited to those listed below, which are based on the practices and privileges of the Legislative Assembly and relevant legislation:

(a) Withdrawal of access to facilities

The control of the Parliament and its precincts are in the joint control of the Presiding Officers. The Legislative Assembly can request that the Presiding Officers withdraw access of facilities to the Member for a period, which would have the effect of restricting and inconveniencing the

¹ Corruption and Crime Commission, *Report on the Investigation of Alleged Public Sector Misconduct in Connection with the Activities of Lobbyists and Other Persons: A Ministerial Decision in Relation to Applications for a Mining Tenement at Yeelirrie*, p xiv.

member concerned. It would be expected that the Presiding Officers would acknowledge and comply with the request by the House in these circumstances, even though it did not automatically follow on a previous occasion.

(b) Apology to the House

The House can request or require an apology, either by a Member in their place in the House or in writing. A refusal to apologise may lead to stronger action being taken by the House.

(c) Censure

A censure motion is a way of recording the opprobrium of the House against one of its members. Censure is a strong parliamentary form for such expression, and is potentially damaging for a member.

(d) Suspension

The ability to suspend members is part of the Legislative Assembly's powers to protect and regulate its own processes. The most recent case of a member being suspended occurred in 2007 by way of motion arising from a Procedure and Privileges Committee report, which was in relation to a breach of privilege.² In that report, the Committee considered that the actions of the member had 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.³

Suspension is regarded as a very serious step by the House. Another significant effect of suspension is that it alters the composition of the House and deprives that member's electors of full representation. It should be noted that a suspended member retains salary and other benefits.

(e) Expulsion

Expulsion is one of the means the Legislative Assembly has at its disposal to regulate itself. This should properly be viewed as a self protective power rather than a punishment, although inevitably it will also be perceived as punishment.

² Procedure and Privileges Committee, *Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters*, Legislative Assembly, Western Australia, Perth, 20 June 2007.

³ Procedure and Privileges Committee, *Inquiry into the Member for Murchison-Eyre's Unauthorised Release of Committee Documents and Related Matters*, Legislative Assembly, Western Australia, Perth, 20 June 2007, p25.

In considering the desirability of expulsion, the Legislative Assembly should note the principles upheld by the Supreme Court of New South Wales in *Armstrong v Budd*, which found in favour of the right of the Legislative Council of New South Wales to expel a member. The grounds for expulsion was that the Legislative Council possessed the inherent right to suspend or expel members whose conduct was such that it:

- a) rendered them unfit to perform their high responsibilities and functions as Members;*
- b) prevented the Council and other Members from conducting its deliberations and exercising its functions with mutual respect, trust and candour;*
- c) caused its honour and the good faith of its deliberations to be suspect; and*
- d) tended to bring the Council into disrepute and lowered its authority and dignity unless it was so preserved and maintained.⁴*

The consequences of expulsion are of course greater than that of suspension. In addition to depriving voters of their elected representative, and the concomitant shift in the balance of representation in the chamber, expulsion triggers a by-election. It should be noted that nothing prevents a Member expelled from standing as a candidate in the by-election triggered by their expulsion.

The Committee emphasises that it makes no recommendation to the House in relation to the measures outlined above. The Committee reiterates that it makes no finding and offers no opinion regarding the actions of the Member for Kalgoorlie.

It is now a matter for the House as to whether it wishes to take any of the actions above, or none of them.

HON. GRANT WOODHAMS, MLA
CHAIRMAN OF THE COMMITTEE

24 November 2009

⁴ *Armstrong v Budd* (1969) 71 SR (NSW) 386.