



THIRTY-SEVENTH PARLIAMENT

**SPECIAL REPORT ON A MATTER OF PRIVILEGE
STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS**

Presented by Hon Giz Watson MLC (Chair)

March 2007

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Date first appointed:

30 June 2005

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“2. Standing Committee on Estimates and Financial Operations

2.1 *An Estimates and Financial Operations Committee* is established.

2.2 The Committee consists of 5 Members, 3 of whom shall be non-government Members.

2.3 The functions of the Committee are to consider and report on -

- (a) the estimates of expenditure laid before the Council each year;
- (b) any matter relating to the financial administration of the State;
- (c) any bill or other matter relating to the foregoing functions referred by the House;
- (d) to consult regularly with the Auditor General and any person holding an office of a like character.”

Members as at the time of this report:

Hon Giz Watson MLC (Chair)

Hon Anthony Fels MLC

Hon Ken Travers MLC (Deputy Chair)

Hon Nigel Hallett MLC

Hon Shelley Archer MLC

Staff as at the time of this report:

Lisa Peterson, Advisory Officer (General)

Renae Jewell, Committee Clerk

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ISBN 1 9212 4307 4

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**SPECIAL REPORT OF THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL
OPERATIONS IN RELATION TO A MATTER OF PRIVILEGE**

1 MATTERS OF PRIVILEGE RAISED AT COMMITTEE MEETING

- 1.1 On Monday 19 March 2007 a meeting of the Estimates and Financial Operations Committee (**Committee**) was held. Members present at that meeting were Hons Giz Watson (Chair), Ken Travers and Nigel Hallett MLCs. Hons Anthony Fels and Shelley Archer MLCs were apologies.
- 1.2 During the meeting the Chair drew the Committee's attention to:
- a) a possible breach of parliamentary privilege in relation to alleged disclosures of deliberations of the Committee; and
 - b) a request made by the Corruption and Crime Commission (CCC) for access to committee records, members and staff.

2 ALLEGED DISCLOSURES OF COMMITTEE DELIBERATIONS

Nature of alleged disclosures

- 2.1 The Chair's awareness of this matter resulted from inquiries made of her by the CCC.
- 2.2 At the Committee's meeting the Chair tabled an outline of facts relating to her knowledge of the matter with relevant documents (attached to this report as Appendix 1).
- 2.3 Due to the nature of the inquiries made by the CCC of the Chair it appeared to the Chair that the Committee's deliberations had been disclosed to third parties by a Committee member, or members, without authorisation. Disclosure appears to have been made to the CCC and to other persons.
- 2.4 In addition the Committee notes that matters relating to the Committee's deliberations have been raised in the CCC during its examination of Noel Crichton-Browne and Hon Shelley Archer MLC on 21 February and 28 February 2007 respectively. Relevant portions of the transcripts are extracted and form part of Appendix 1.

Reporting of matter to the House

- 2.5 The Committee notes that:
- Members must not disclose proceedings (including deliberations), evidence or documents not specifically authorised; and

- any unauthorised breach of this confidentiality may be dealt with by the House as a contempt.

2.6 Erskine May comments on the disclosure of a committee's proceedings or evidence as follows:¹

By the ancient custom of Parliament "no act done at any committee should be divulged before the same be reported to the House"

The publication or disclosure of proceedings of committees conducted with closed doors or of draft reports of the committees before they have been reported to the House will, however, constitute a breach of privilege or a contempt.

2.7 The Committee also notes Standing Order 422 which provides:

Committee not to entertain charges against a Member

422. *If any information come before any committee which involves an accusation against any Member, the committee shall direct that the Council be acquainted with the matter of such information, without proceeding further thereupon.*

2.8 The Committee therefore resolved to report this matter to the House.

3 CCC REQUEST FOR ACCESS TO COMMITTEE RECORDS, MEMBERS AND STAFF

CCC request

3.1 On 12 February 2007 the Chair received a letter from the CCC requesting a copy of the agenda and minutes for the Committee meeting of 31 January 2007. The Chair responded by letter dated 13 February 2007. (Letters attached to Appendix 1).

3.2 The Committee observes that these documents were prepared as part of the Committee's proceedings, are confidential to the Committee and covered by parliamentary privilege. While the Committee may have power to disclose such material, in view of the purpose for which the material may be used and its relationship with the matter of privilege raised in this report the Committee resolved that it is appropriate that the Committee report this matter to the House for its consideration.

¹ *Erskine May's Treatise on the Laws, Privileges, Proceedings and Usage of Parliament (Parliamentary Practice)*, United Kingdom, Twenty-First Edition.

A handwritten signature in black ink that reads "C. Watson". The signature is written in a cursive, flowing style.

Hon Giz Watson MLC
Chair

Date: 20 March 2007

APPENDIX 1
STATEMENT OF FACTS

APPENDIX 1

STATEMENT OF FACTS

Matters arising from meetings with the Corruption and Crime Commission

The following matters of fact are presented for consideration by the Estimates and Financial Operation Committee that indicate that a breach of privilege may have occurred with the disclosure of committee's deliberations.

Matter leading up to the CCC inquiry

- At the Estimates and Financial Operation Committee meeting held on 30 October 2006 Hon Anthony Fels advised the committee that he intended to move a motion that the committee inquire into the Iron Ore Industry.
- The committee asked Hon Anthony Fels to provide members with a brief outline of the various issues and present them at the next meeting scheduled for 13 November 2006.
- On 4 December the committee received a letter from Mr Ian Loftus, Policy and Public Affairs Manager from the Association of Mining and Exploration Companies (Inc) (AMEC) dated 27 November 2006. Mr Loftus outlined his concerns into the Western Australian iron ore policy. The letter indicated AMEC had become aware that the Estimates and Financial Operation Committee was considering an inquiry into the Western Australian iron ore policy.
- Hon Anthony Fels proposed inquiry however was not discussed again until 31 January 2007. At this meeting the committee received a letter from Hon Anthony Fels outlining the proposed terms of reference in relation to the Iron Ore Industry in Western Australia. It was resolved to defer the matter.

Approach by the CCC

- On Thursday 8 February Tanya Campbell (investigator) from the Corruption and Crime Commission telephoned seeking a “meeting” with me as the Chairperson of the Estimates and Financial Operations Committee.
- I requested Tanya to place the request for a meeting in writing. Later that day I received the letter requesting a meeting on Monday 12 February 2007 (see Appendix A).
- I contacted the Acting Clerk Mr Malcolm Peacock to seek advice and met with him on several occasions over the next few days.
- I replied to the letter on the 9 February 2007 and stated I would agree to meet on Monday 12 February 2007 subject to the response to certain questions. I further advised the CCC I had requested the Acting Clerk Mr Malcolm Peacock to attend the meeting (see Appendix B).
- I received a response to my letter on the morning of 12 February 2007 (see Appendix C).
- On Monday 12 February 2007, at 9.30am, I and the Acting Clerk meet with Tanya Campbell (investigator) and John Lynch (senior investigator) at my electorate office. From what was disclosed it would seem a member of the Estimates Committee has disclosed to the CCC the fact that another member of the committee had divulged committee information to a third party. The CCC asked if the Hon Anthony Fels had proposed an inquiry into the iron ore policy and referred to a letter from Association of Mining and Exploration Companies (AMEC).

- The CCC asked about a comment made, that could have only been known by a Member or staff member, at a closed meeting of the Estimates and Financial Operations Committee. It seemed to be known by the CCC that Hon Anthony Fels had approached AMEC to discuss the proposed inquiry after that Committee meeting.
- On the 12 February 2007, I received a letter from the CCC requesting a copy of the agenda and Minutes for the Estimates and Financial Operations Committee meeting of 31 January 2007 (see Appendix D).
- I responded to the letter on 13 February 2007 (see Appendix E).

Public Hearing of the CCC

- On 21 February 2007 during the public hearings of the CCC Mr Hall (Counsel assisting) asks a number of question of Mr Crichton-Browne¹ as follows:

“Do you know whether Mr Fels sits on the Estimates Committee?---

Thank you, yes, a notice of motion taking a reference in respect to the iron ore industry in Western Australia.

Right. Now, when you say that is something you were suggesting the Estimates Committee might do an inquiry into?---Yes.

And what has Mr Fels - you've made the suggestion to Mr Fels and has - in that capacity you were acting as a paid consultant for someone?---

Yes.

Is that business that you're doing with Mr Burke and Mr Grill?---I'm dealing directly with the company.

Right. Which company is that?---Kazalie.

¹ page 501

Have you told Mr Fels that you were acting as a paid consultant in this regard?---Yes, I have.

Do you know whether that outcome has been obtained?---I suspect is hasn't.

When you say you've suggested it, have you done more than suggest it?

Have you helped him with possible terms of reference for the inquiry?-

--Yes, I have.

In fact have you dictated those terms of reference?---Yes.

Has that inquiry been publicly announced?---No.

Do you know what state it has reached?---No I don't. I know it hasn't progressed but I don't know what state - - “

- I note from the CCC transcript of evidence on 28 February 2007² Mr Urquhart (Counsel assisting) stated *“third matter is in relation to a proposal parliamentary standing committee requesting an inquiry into the state's iron ore policy. In each instance the hearing will consider whether misconduct by any public officers”*.

- Later in the transcript of evidence³ I note Mr Urquhart states the following:

“Turning now to the last matter which involves the Standing Committee on Estimates and Financial Operations. Kazaley Resources is a small mining company.

In a widely publicised move in 2005 it pegged the northwest Shovelanna iron ore deposit after the mining giant Rio Tinto failed to renew its lease in time. In April 2006 the then Minister for Resources terminated Kazaley's claim to this iron ore deposit. The matter

² page 959

³ pages 959 to 960

subsequently became the subject of Supreme Court proceedings initiated by Kazaley to have the minister's decision set aside. These proceedings are still ongoing.

Mr Burke and Mr Grill were retained by Kazaley during the course of 2006. This part of the hearing will examine the approach by Mr Burke to the Parliamentary Standing Committee on Estimates and Financial Operations to hold an inquiry into the iron ore policy of this state. As Mr Hall has already stated to the Commission in one of his openings earlier this week, standing committees of Parliament have significant powers including the holding of public hearings and the presentation of reports to the relevant house.

In this instance the standing committee was comprised of members of the Legislative Council and its functions included examining any matters relating to the financial administration of the state. This hearing will examine the motive behind the request for this hearing and whether there was an ulterior and improper purpose behind the requests for this inquiry.

Yesterday's hearing examined the 2004 inquiry by the Economics and Industry Standing Committee of the Legislative Assembly into vanadium resources at Windimurra. One matter that arises is whether there has been an attempt to misuse the functions of the Standing Committee on Estimates and Financial Operations and whether any public officer has engaged in misconduct in that attempt."

- Later in the transcript⁴ Mr Urquhart asks a number of questions of the Hon Shelley Archer:

"You're a member of the standing committee on delegated legislation?---

Yes, that's right.

That's a joint committee, is it?---Yes, it is.

Have you been in that committee since May of 2005?---I think so, yes.

Right and you're also a member of another committee?---Yes, I am.

Is that the standing committee on estimates and financial operations?---

That's correct.

Have you been on that committee since June of 2005?---That sounds about right.

Was that in fact the first time that committee was created?---Yes, it was."

I suggest to the Committee that a member or members of this Committee may have disclosed to the AMEC and the CCC matters discussed at a closed meeting.

The question of breach of privilege relates to four matters:

1. How did AMEC become aware of the proposed inquiry?
2. How did the CCC become aware of the proposed inquiry?
3. How did the CCC become aware of the date that the matters regarding the iron ore policy were discussed?
4. How could the CCC know about comments made during a closed meeting of the Estimates and Financial Operations Committee?

I therefore move pursuant to Standing Order 422 that this committee resolve to report the matter to the House.

⁴ page 962



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Our ref: 00899/2006

8 February 2007

CONFIDENTIAL

The Honourable Giz Watson MLC
Chair
Estimates and Financial Operations Committee
Legislative Council

By way of facsimile 9201 0583

Dear Ms Watson

REQUEST FOR MEETING

I refer to our phone conversation earlier today.

As discussed, I would like to arrange a meeting with you in your capacity as Chair of the Estimates and Financial Operations Committee of the Legislative Council. The purpose of the meeting is to obtain general information on the confidentiality obligations of Committee Members.

I would appreciate your discretion regarding these inquiries.

I look forward to discussing the matter further with you. Please do not hesitate to contact me on 9215 4804.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tanya Campbell'.

Tanya Campbell
Investigator

PO Box 7667 Cloisters Square, St George's Terrace PERTH WA 6850
Ground Floor, 186 St George's Terrace PERTH 6000
Telephone: 08 92154888 Facsimile: 08 92154884
Email: info@ccc.wa.gov.au
Website: www.ccc.wa.gov.au



Giz Watson MLC

BSc (Environmental Science)

Member for North Metropolitan Region

Electorate Office

339 Oxford Street
Leederville WA 6007

Appendix B

Telephone	(08) 9201 0582
Facsimile	(08) 9201 0583
Parliament House	(08) 9222 7325
Web Page	www.mp.wa.gov.au/giz-watson
Email	gwatson@mp.wa.gov.au

Tanya Campbell
Corruption and Crime Commission
PO Box 7667
Cloisters Square
St George's Terrace
PERTH 6850

By fax 9215 4884
1.20 9.2.07

Dear Ms Campbell

I refer to your request for a meeting (received by facsimile on Thursday 8 February 2007) with me in my capacity as Chair of the Estimates and Financial Operations Committee to obtain general information on the confidentiality obligations of Committee Members.

I am happy to meet with you subject to you addressing the following in writing:

- Am I under investigation?
- The details of the allegation you are investigating;
- Will the meeting be a formal proceeding under the Corruption and Crime Commission Act 2003 and if so under what section of the Act?
- What are my rights as a witness?
- What is the status of the information that I provide to you, public or private?
- What restrictions, if any, are imposed on me under the Act in discussing with other persons the details of my discussions with you?
- Will our meeting be recorded?
- Apart from yourself who else will be attending the proposed meeting?

I understand from my staff that you would like to meet this coming Monday, subject to your response. I will be available at 9.30 am at my electorate office (339 Oxford Street, Leederville) on Monday 12 February if this time suits you. Can you please confirm with my office that this time is suitable before 5.00 pm today.

For your information I have asked the Acting Clerk of the Legislative Council to attend the proposed meeting at my office.

I remind you also that as a Member of Parliament I have certain obligations to the Parliament in respect to matters of privilege and I may be constrained by these obligations in the answers I can provide.

I look forward to your reply.

Yours sincerely



Giz Watson MLC
Member for the North Metropolitan Region

9 February 2007

cc: Mr Malcolm Peacock
Acting Clerk of the Legislative Council



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Our ref: 00899/2006

12 February 2007

The Honourable Giz Watson MLC
Chair
Estimates and Financial Operations Committee
Legislative Council

By way of facsimile 9201 0583

Dear Ms Watson

I refer to our previous discussion and your facsimile of 9 February 2007.

We are available to meet with you today at 9.30 am should this time remain suitable.

In response to your queries, I advise as follows:

- I can confirm that you are not being investigated.
- Our intentions for the meeting are to obtain general information on the confidentiality obligations of Committee Members. We are however unable to provide you with specific details of the investigation being conducted at this stage.
- We are making informal inquiries and you are not obliged to talk to us but we would appreciate your assistance.
- You are not restricted from discussing the matter with other persons, but we would appreciate your discretion.
- Senior Investigator John Lynch will also be attending the meeting.

Please do not hesitate to contact me on 9215 4804.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Tanya Campbell'.

Tanya Campbell
Investigator

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Our ref: 00899/2006

12 February 2007

The Honourable Giz Watson MLC
Chair
Estimates and Financial Operations Committee
Legislative Council

By facsimile 9201 0583

Dear Ms Watson

I refer to your meeting earlier today with Officers of the Commission regarding the Estimates and Financial Operations Committee and confidentiality obligations of Committee Members.

In relation to this matter, could you please provide copies of the following:

1. Agenda for the meeting of 31 January 2007 and the next scheduled meeting;
and
2. Minutes for the meeting of 31 January 2007 and the last meeting conducted in 2006.

In this regard, I appreciate that some of the items may be covered by privilege and suggest that you may block or conceal these matters from the documents.

Your assistance in this matter is appreciated.

If you have any queries, please contact Senior Investigator John Lynch on 9215 4835 or Investigator Tanya Campbell on 9215 4804.

Yours faithfully


Kevin Hammond
COMMISSIONER

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Appendix E

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Email	gwatson@mp.wa.gov.au

Mr Kevin Hammond
Commissioner
Corruption and Crime Commission of Western Australia
PO Box 7667
Cloister Square
St George's Terrace
PERTH WA 6850

by facsimile 9215 4884

Dear Mr Hammond

Thank you for your letter (dated 12 February 2007, reference 00899/2006) received today by facsimile.

At this stage I am unable to provide copies of the documents you request.

The documents you have requested are confidential to the Standing Committee on Estimates and Financial Operations and as such are subject to Parliamentary privilege.

As a matter of course your correspondence will be raised with the Standing Committee on Estimates and Financial Operations at its next meeting on 19 March 2007 and the Committee as a whole will consider your request at that time.

Yours faithfully

G. Watson

Giz Watson MLC
Member for North Metropolitan Region
Chair of Standing Committee on Estimates and Financial Operations

13 February 2007

Second Matter - Request for Privileged Documents

The Corruption and Crime Commission have requested in the letter dated 12 February 2007 to have copies of -

1. Agenda for the meeting of 31 January 2007 and the next scheduled meeting;
and
- 2 The Minutes for the meeting of 31 January 2007 and the last meeting conducted in 2006.

These documents were prepared as part of the committees proceedings, are confidential to the committee and covered by Parliamentary Privilege. While the committee may have power to disclose such material, in view of the purpose for which the material may be used and its relationship with the matter of privilege to which I referred it is appropriate that the committee report this matter to the House for its consideration.

I therefore move that matter be referred to the House for its consideration.



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Our ref: 00899/2006

12 February 2007

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Yours faithfully

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13 February 2007

