



COPY

Attorney General; Minister for Commerce

Our Ref: 67-14016

Hon Kate Doust MLC
President of the Legislative Council
Chair of the Standing Committee on Procedure and Privileges
C/- Parliament House
4 Harvest Terrace
West Perth, WA, 6005

Dear Madam Chair

I refer to Report 57 of the Standing Committee on Procedure and Privileges (Committee) dated September 2019 and tabled in the Legislative Council on Tuesday, 24 September 2019. I note in particular paragraph 6 of Recommendation 1 which provides as follows:-

That the Clerk is directed not to comply with the CCC notices to produce served on the Clerk on 10 September 2019 pending:

- (a) both the outcome of any proceedings and an assessment of parliamentary privilege by the [Committee] with respect to those notices; or*
- (b) further direction from the [Committee] taking account of legal advice.*

As I understand Report 57, paragraph 6 is the Committee's response to the receipt by the Clerk of two Notices to Produce dated 10 September 2019 from the Corruption and Crime Commission of Western Australia (CCC) for the Clerk to produce, by 7 October 2019, relevant documentation other than documentation to which Parliamentary privilege attaches. As I understand it therefore, the CCC is not seeking from the Clerk any material which is properly the subject of a claim for Parliamentary privilege, and indeed, the Notices to Produce contemplate that any claims for Parliamentary privilege are to be determined by the Committee.

I also note from Report 56, also dated September 2019, but tabled in the Legislative Council on [insert date] that the Committee had received legal advice from Mr Zelestis QC and that his advice "... confirms that the Legislative Council **does not have the power to order persons, not being members of the Council, to not produce documents** ..." [emphasis added] although the Report goes on to observe that Mr Zelestis confirmed that "... the Legislative Council does have the power to pass a resolution in terms which "require" a person not to produce privileged documents to another person or body". See paragraph 4.2 of Report 56.

I note further that Mr Darren Foster commenced Supreme Court proceedings against you in relation to a previous order, which was Order No.4, passed by the Legislative Council on 15 August 2019. Order No.4 was of course an order which the Leader of the House advised the Legislative Council was unlawful, however, despite that, a majority of the House voted (along party lines) in favour of it. Subsequently, the State Solicitor wrote to you by letter dated 26 August 2019 expressing serious doubts as to the lawfulness of the Order. Seemingly it was that letter and the subsequent proceedings which were issued that led to Mr Zelestis' above advice being obtained,

and it was that advice that seemingly led to Order 4 being rescinded, which in turn led to Mr Foster discontinuing the Supreme Court proceedings.

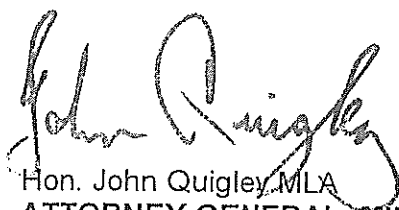
As the First law Officer of the State I am extremely concerned that the Committee would, for a second time, recommend to the Legislative Council that it agree to a recommendation which it would seem meets the precise description of the kind of order the Mr Zelestis QC advised was unlawful. Based on the Committee's own legal advice the Legislative Council does not have the power to order the Clerk (as a non-Member) to not produce documents (to the CCC) which are not the subject of a proper claim for Parliamentary privilege, and yet this is what resolution 6 in Recommendation 1 of Report 57 purports to recommend.

In addition, as the Minister responsible for the administration of the *Corruption, Crime and Misconduct Act 2003 (WA)*, I am very troubled by the fact that the Committee would recommend measures, let alone seemingly **unlawful** measures, which would have the effect of hindering the CCC obtaining relevant (non-privileged) documentation for an investigation which was designed to uncover misconduct and corruption. I of course note from paragraphs 1.8 of Report 57 that the Committee has no intention of impeding the CCC's investigation (and that it intends to develop a workable procedure with the CCC as referred to in paragraph 1.9), however paragraph 6 of Recommendation 1 would appear to do precisely that.

In the circumstances I would be grateful if you could confirm that no such unlawful recommendation will be made to the Legislative Council. Of course, to the extent that you have received legal advice from Mr Zelestis QC (or anyone else) confirming, contrary to his aforementioned opinion, that the recommendation, if adopted, would be lawful, then I would be pleased to receive a copy.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Quigley', written in a cursive style.

Hon. John Quigley, MLA

ATTORNEY GENERAL; MINISTER FOR COMMERCE

25 SEP 2019