

**SELECT COMMITTEE OF PRIVILEGE ON A MATTER ARISING
IN THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS**

Report

HON MURRAY CRIDDLE (Agricultural) [4.00 pm]: I am directed to present the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations. I move -

That the report do lie upon the table and be printed.

[See paper 3466.]

HON MURRAY CRIDDLE: I seek leave to make a short statement about this report.

Leave granted.

Hon MURRAY CRIDDLE: I thank the house for that leave.

The Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations identified that between 30 October 2006 and 1 February 2007 there were a number of unauthorised disclosures from separate sources on the deliberations of the Standing Committee on Estimates and Financial Operations into the inquiry into the state's iron ore industry. The select committee concluded that each and every one of these unauthorised disclosures was the result of a strategy devised and implemented by directors of Cazaly Resources Limited, and their lawyers and consultants, for the purpose of using the proceedings of the Standing Committee on Estimates and Financial Operations to influence legal proceedings then on foot before the Court of Appeal of the Supreme Court of Western Australia in relation to the Shovelanna iron ore mining tenement. Specifically, the strategy involved using the Standing Committee on Estimates and Financial Operations to establish an inquiry into the state's iron ore policy, not primarily for the purposes of the inquiry itself, but for the purposes of -

- a) using the inquiry to influence or persuade Rio Tinto Limited to settle the dispute over the Shovelanna tenement on terms favourable to Cazaly Resources Limited by:
 - calling or threatening to call as witnesses Rio Tinto executives for questioning before the Standing Committee on Estimates and Financial Operations and publicly embarrassing them; and
 - uncovering useful documents and/or evidence to assist in the Supreme Court appeal against former Minister Bowler's decision on the Shovelanna tenement;
- b) using the inquiry to influence or persuade the State Government (Minister) to accede to or to facilitate the settlement of the dispute over the Shovelanna tenement on terms favourable to Cazaly Resources Ltd by:
 - calling or threatening to call as witnesses senior public servants, and Ministers for questioning before the Standing Committee on Estimates and Financial Operations and publicly embarrassing them; and
 - uncovering useful documents and/or evidence to assist in the Supreme Court appeal against former Minister's Bowler's decision on the Shovelanna tenement;
- c) influencing the outcome of legal proceedings then on foot before the Court of Appeal of the Supreme Court of Western Australian against former Minister Bowler's decision on the Shovelanna dispute by:
 - stirring up public support for Cazaly Resources Limited;
 - attempting to circumvent the *sub judice* rule by taking active steps to disguise the fact that Cazaly Resources Limited was promoting the proposed inquiry into the State's iron ore policy; and
 - uncovering useful documents and/or evidence in the Standing Committee on Estimates and Financial Operations proceedings to assist in a Supreme Court appeal and;
- d) discrediting the State's iron ore policy so that the policy could not be and would not be relied on by the Minister in the event that the Supreme Court sent the matter back to the Minister for a fresh decision.

Central to the successful execution of this strategy was the influencing of at least two members of the Standing Committee on Estimates and Financial Operations in the performance of their duties as committee members for the improper purposes of -

- obtaining knowledge of confidential deliberations of the Standing Committee on Estimates and Financial Operations (unauthorised disclosures); and
- influencing the proceedings of the Standing Committee on Estimates and Financial Operations - in particular, the calling of witnesses, the examination of witnesses, the content of the Standing Committee on Estimates and Financial Operations inquiry report, and any findings and recommendations - as required depended on whether or not a settlement in the legal proceedings was achieved.

The committee observed that the strategy was devised and implemented principally by Mr Brian Burke and Mr Julian Grill on the authority of Mr Nathan McMahan, managing director of Cazaly Resources Limited, and Mr Clive Jones, joint managing director of Cazaly Resources Limited.

The attempt to use the proceedings of the Standing Committee on Estimates and Financial Operations for an improper purpose has significant implications for the Legislative Council committee system. As a result of approaches made as part of the above-mentioned strategy, the following three members of the five-member Standing Committee on Estimates and Financial Operations - Hon Shelley Archer, Hon Anthony Fels and Hon Giz Watson - a series of unauthorised disclosures made which singularly or as a group either interfered with, or were likely to interfere with, the proper functioning of the standing committee. The committee has identified unauthorised disclosures from the Standing Committee on Estimates and Financial Operations of varying degrees of seriousness by Hon Shelley Archer, Hon Anthony Fels, Mr Brian Burke, Mr Noel Crichton-Browne, Mr Robert Edel, Mr Alex Jones, Ms Philippa Reid and Hon Giz Watson. The most serious of the unauthorised disclosures were by Hon Shelley Archer, MLC, and Hon Anthony Fels, MLC.

Shortly after embarking upon this inquiry, it became readily apparent that this was potentially one of the most important and challenging inquiries in the history of the Legislative Council. The importance of this inquiry arose not only because it was by a select committee of privilege dealing with a suspected breach of one of the oldest and most important rules of Parliament; that is, the confidentiality of the proceedings of parliamentary committees behind closed doors. Beyond this fact, the committee's inquiry has broken new ground in a number of respects.

In addition to the relevant documents and oral testimony, the committee received evidence of a nature not usually available to parliamentary committees. The committee was provided with extensive audio intercepts and surveillance evidence gathered by the Corruption and Crime Commission of Western Australia. It is exceptionally rare in cases of unauthorised disclosure of parliamentary committee proceedings that Parliament has access to such clear evidence of who committed an unauthorised disclosure, and the exact time and date when the disclosures took place. In gaining access to such evidence, it also left the committee with the problem of dealing with conflicting, and, in several cases, obviously false evidence. The issue of false evidence to the committee was a difficult one. It is the committee's view that contempts committed by way of false evidence to the committee were, in most instances, more serious in their nature and impact than the original breaches of privilege and contempts that were the subject matter of the committee's inquiry. As false evidence contempts arose during the course of the inquiry, the committee assessed them and has made recommendations to the house as to appropriate penalties.

In the second round of hearings, during September and October 2007, the committee engaged counsel assisting to ask questions on behalf of and through the committee's chairman. Counsel assisting was engaged by the committee in an attempt to ascertain the truth out of sharply conflicting evidence, and as a response to the fact that key witnesses had the benefit of counsel. During the first round of hearings, a number of witnesses repeatedly interrupted proceedings to obtain advice from their counsel. The committee formed the view prior to the second round of hearings that given the nature of conflicting evidence before it, it was important to have the committee's questions asked by a specialist advocate who could maintain a line of questioning on the chairman's behalf, while the chairman dealt with numerous procedural objections and points of relevance raised by the witnesses. The committee has sought at every opportunity to adopt standards of natural justice over the course of the inquiry to the extent that such standards were compatible with the constraints applying to a select committee under the standing orders of the Legislative Council. The limits imposed by the private evidence rules applying to select committees have caused significant practical problems for the committee in providing witnesses with access to relevant information and have exposed the committee to almost constant questioning and objection from witnesses and their legal counsel. Many of the legal counsel advising witnesses were clearly unfamiliar with parliamentary privilege and parliamentary processes. Nevertheless, the committee is satisfied that it has afforded natural justice to witnesses over the course of this inquiry within the scope available to the committee.

The committee identified a wide range of contempts against both the Standing Committee on Estimates and Financial Operations and the committee itself during the course of the inquiry. These contempts varied significantly in their seriousness. The committee applied the test that to even qualify as a contempt, a particular action must have interfered or been likely to interfere with the functioning of the Parliament or the parliamentary committee. The committee formed the view that, based on the past practice of privileges committees of the Legislative Council, the committee had no flexibility when considering breaches of privilege and contempts to apply the much higher threshold of substantial interference that has been expressly adopted by houses in other jurisdictions.

The committee has reported all identified disclosures and proceedings of the Standing Committee on Estimates and Financial Operations in relation to the proposed inquiry into the state's iron ore industry. Each of these disclosures is a breach of privilege and a contempt of Parliament. In reporting all such instances of disclosure, the committee noted the comments of a previous select committee of privilege of the Legislative Council that because a contempt can be committed regardless of a person's intent, or lack of it, the penalty imposed is the appropriate means for the house to indicate how serious it takes it to be; and that, customarily, an unintended or technical contempt is excused without penalty. The committee has considered appropriate penalties for some quite serious contempts of Parliament, but has been frustrated by unclear and inadequate definitions of the Legislative Council's punitive powers in the Parliamentary Privileges Act 1891. The committee considers this unacceptable and has recommended urgent action by the Legislative Council to expand or clarify the punitive powers of the Legislative Council.

The committee received extensive procedural and legal advice from the former Clerk Assistant (House), Mr Nigel Pratt; the former Clerk of the Legislative Council, Ms Mia Betjeman; the current Clerk of the Legislative Council, Mr Malcolm Peacock; and the Clerk Assistant (Committees), Mr Paul Grant. Barrister Mr Peter Quinlan also provided legal opinion on the evidence provided by the Corruption and Crime Commission. Mr Philip Urquhart acted as counsel assisting the committee in the second round of hearings. The committee thanks these individuals for their assistance.

The committee thanks the Hansard staff for their services, which were made all the more difficult by restrictions placed on their access to the committee's documents. The committee thanks the staff of the Parliamentary Library for locating a number of ancient and obscure committee reports and articles. The committee expresses its gratitude to the members and staff of the Standing Committee on Estimates and Financial Operations for cooperating with the committee over the course of the inquiry. Finally, the committee thanks its staff for their work over the course of the inquiry; in particular, I must mention Mr Paul Grant, Ms Jan Paniperis and Ms Kelly Campbell for their extreme efforts. Paul Grant's efforts were very well appreciated. I also pass on my sincere appreciation to Hon Adele Farina and Hon Barry House for their work on this committee. It has been a challenge requiring a great deal of their time, knowledge and experience. Their support and cooperation with meeting times and the balance of decision making during deliberations and the questioning required for this report have been of the highest order.

As the committee is a select committee and so will cease to exist upon reporting to the Parliament, the committee has endeavoured to provide as much detail in this report as possible about the committee's evidence, the proceedings and any issues that arose in the course of the inquiry. It is hoped that this detail will assist in addressing any questions that may be asked about the committee's approach to the inquiry and facilitate as full a debate as possible in the house on this report.