



**THIRTY-SEVENTH PARLIAMENT**

**SPECIAL REPORT**

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

**IN RELATION TO**

**MATTERS OF PRIVILEGE RAISED BEFORE THE  
COMMITTEE**

Presented by Hon Murray Criddle MLC (Chairman)

November 2007

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

### **Date first appointed:**

21 March 2007

### **Terms of Reference:**

- (1) A Select Committee of Privilege be appointed to inquire into and report on -
  - (a) whether there has been any disclosure of deliberations of the Standing Committee on Estimates and Financial Operations relating to a proposed inquiry into the State's Iron Ore industry;
  - (b) if so, whether such disclosure constitutes a breach of the privileges, or is a contempt, of this House; and
  - (c) if the Committee so finds, what penalty, if any, the House might impose for the breach or contempt.
- (2) The Committee have access to documents in the possession or under the control of the Standing Committee on Estimates and Financial Operations relevant to the inquiry.
- (3) The Committee have power to send for persons, papers and records and to travel from place to place.
- (4) The Committee have power to meet at any time when the Legislative Council is not sitting or a sitting is suspended.
- (5) The Committee may present interim reports without a requirement for leave and is to present its final report to the House not later than Wednesday, 30 May 2007.

### **Members as at the time of this inquiry:**

Hon Murray Criddle MLC (Chairman)

Hon Barry House MLC

Hon Adele Farina MLC

### **Staff as at the time of this inquiry:**

Paul Grant, Assistant Clerk (Committees)

Jan Paniperis, Committee Clerk

Kelly Campbell, Executive Officer  
(Committees)

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**ISBN 1 921243 40 6**

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

**IN RELATION TO THE**

**MATTERS OF PRIVILEGE RAISED BEFORE THE COMMITTEE**

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**1 MATTERS OF PRIVILEGE RAISED AT COMMITTEE MEETING**

- 1.1 On Thursday, 6 November 2007 a meeting of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations (**Committee**) was held. Members present at the meeting were Hon Murray Criddle, Chairman, Hon Barry House and Hon Adele Farina MLCs.
- 1.2 At the commencement of the meeting the Clerk Assistant (Committees) drew to the Committee's attention a possible breach of parliamentary privilege in relation to alleged disclosures of deliberations of the Committee.

**2 ALLEGED DISCLOSURES OF COMMITTEE DELIBERATIONS**

**Nature of alleged disclosures**

- 2.1 On 6 November 2007, the Committee was advised that *The West Australian* journalist, Mr Robert Taylor, had made the following inquiries:
- 2.1.1 at about midday on 6 November 2007, Mr Owen Cole of the Corruption and Crime Commission of Western Australia (CCC) telephoned the Clerk of the Legislative Council, Mr Malcolm Peacock, to advise that the CCC had received a telephone call from Mr Robert Taylor asking the CCC to confirm whether it had provided intercept material to the Committee;
- 2.1.2 on the afternoon of 6 November 2007, Mr Robert Taylor telephoned Mr Philip Urquhart, Counsel Assisting the Committee asking whether it was true that Mr Brian Burke had objected to him acting as Counsel Assisting the Committee; and
- 2.1.3 at about 1.30 pm of 6 November 2007, Mr Robert Taylor telephoned the Committee Chairman, Hon Murray Criddle MLC inquiring whether the Committee had used CCC intercept material and whether the Committee would be reporting to the House on 15 November 2007.
- 2.2 While the existence of the CCC evidence could have been provided by any number of persons involved in the Committee proceedings, the information concerning Mr Brian Burke's objection could only have been provided by a more limited number of

persons who were either involved in the private hearings of Mr Burke before the Committee and/or the preparation of a private written submission and letters for and on behalf of Mr Burke to the Committee. A list of relevant evidence and documents of the Committee is at Appendix 1.

2.3 On 7 November 2007 an article was published in *The West Australian* written by Mr Taylor regarding the Committee's private proceedings. See the article attached at Appendix 2.

2.4 On 8 November 2007, further articles were published in *The West Australian* regarding the Committee's private proceedings. See the articles attached at Appendix 3.

### **Reporting of the matter to the House**

2.5 The Committee notes Standing Order 361, which provides:

*"The evidence taken by any select committee of the Council, and documents presented to such committee which have not been reported to the Council, shall not be disclosed or published, except by leave of the Council, by any Member of such committee, or by any other person."*

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

### **Recommendation as to the referral of the matter to the Standing Committee on Procedure and Privileges**

2.7 Pursuant to paragraph 6.5 of the terms of reference of the Standing Committee on Procedure and Privileges, the Committee recommends that the matter be referred to the Standing Committee on Procedure and Privileges for inquiry and report.

**Recommendation 1: The Committee recommends that -****(1) The Standing Committee on Procedure and Privileges inquire into and report on -**

- (a) whether articles appearing in *The West Australian* newspaper on Wednesday, 7 November 2007, and Thursday, 8 November 2007, disclosed the private proceedings of the Select Committee of Privilege on a matter arising in the Standing Committee on Estimates and Financial Operations;**
- (b) if so, whether such disclosure constitutes a breach of the privileges, or is a contempt, of this House;**
- (c) if the Committee so finds, what penalty, if any, the House might impose for the breach or contempt; and**
- (d) any other relevant matter arising from the Committee's investigation.**

**(2) The Committee have access to documents set out in Appendix 1 of this Special Report.**

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**Hon Murray Criddle MLC**  
**Chairman**

**13 November 2007**





**APPENDIX 1**  
**LIST OF RELEVANT EVIDENCE AND DOCUMENTS OF**  
**THE COMMITTEE**



# **APPENDIX 1**

## **LIST OF RELEVANT EVIDENCE AND DOCUMENTS OF THE COMMITTEE**

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### **1 RELEVANT EVIDENCE AND DOCUMENTS**

1.1 The following evidence and documents are relevant to the private proceedings of the Committee that have been referred to in the various articles in *The West Australian* newspaper:

- a) letter from the Committee to Mr Brian Burke, dated 29 August 2007;
- b) letter from the Committee to Mr Brian Burke, dated 31 August 2007;
- c) email from Mr Stephen Lemonis, counsel for Mr Brian Burke, to the Committee, dated 7 September 2007 at 12:51pm (with attached draft letter to Mr Michael Cashman, Director, Legal Services, the Corruption and Crime Commission of Western Australia);
- d) email from Mr Stephen Lemonis to the Committee, dated 7 September 2007 at 2:11pm;
- e) letter from the Committee to Mr Stephen Lemonis, dated 10 September 2007;
- f) transcript of evidence of Mr Brian Burke, dated 10 September 2007;
- g) letter from the Committee to Mr Brian Burke, dated 16 October 2007;
- h) letter from Mr Brian Burke to the Committee dated 23 October 2007; and
- i) submission from Fairweather & Lemonis, Barristers and Solicitors, to the Committee, regarding the Committee's preliminary findings in relation to Mr Brian Burke, dated 23 October 2007.



**APPENDIX 2**  
**ARTICLE OF 7 NOVEMBER 2007 PUBLISHED IN**  
***THE WEST AUSTRALIAN***



APPENDIX 2

ARTICLE OF 7 NOVEMBER 2007 PUBLISHED IN

*THE WEST AUSTRALIAN*

Established 1833

Wednesday, November 7, 2007

www.thewest.com.au \$1.20

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# The West Australian

## Furore looms over secret MPs' probe

**ROBERT TAYLOR**  
STATE POLITICAL EDITOR

A political firestorm is brewing over the use of Corruption and Crime Commission tapes at a secretive parliamentary inquiry which threatens the careers of top Perth lawyers and businesspeople.

*The West Australian* understands that with the inquiry yet to hand down its findings, controversial former premier and lobbyist Brian Burke has complained to the Parliamentary Inspector of the CCC, Malcolm McCusker, that the commission had no right to hand over the tapes to a Legislative Council select privileges committee.

The committee was established in March after the CCC was stymied in

its attempts to investigate a plan by Mr Burke, his business partner Julian Grill and others to push for an Upper House inquiry into the WA iron ore industry.

The pair were employed by a key stakeholder in junior explorer Cazaly Resources, which was involved in a Supreme Court battle with mining giant Rio Tinto over the rich Shovelanna iron ore prospect when the plan to push for a broad inquiry into the State's iron ore policy was hatched.

Although the iron ore inquiry never went ahead, *The West Australian* understands the lawyers and businessmen involved with the two lobbyists are enduring an anxious wait as the committee decides whether the plan breached parliamentary rules.

If so, they could be found in con-

tempt of Parliament, which carries penalties from a reprimand to fines to jail sentences. One of the lawyers is believed to be close to the Carpenter Government.

Mr Grill was forced to apologise to the Legislative Assembly this year after being found guilty of contempt for receiving a leaked parliamentary committee report from former minister John Bowler.

The privileges committee report, expected to be tabled in the Legislative Council on or before November 15, will also be closely scrutinised by Mr McCusker, who is believed to have been consulted at the time by the lawyers in the group over the proposed iron ore inquiry's terms of reference in his capacity as one of Perth's most sought-after barristers.

Mr McCusker would not comment yesterday, but *The West Australian* believes he has asked the CCC for an explanation of the grounds on which it decided to hand the tapes to the politicians.

Also in the balance are the careers of Labor MP Shelley Archer and Liberal Anthony Fels, whose discussions with Mr Burke and former Liberal Party powerbroker and Burke associate Noel Crichton-Browne over the iron ore proposal were singled out by the CCC at hearings this year.

In February, the lawyer assisting the CCC hearings, Philip Urquhart, said Ms Archer would be questioned on the proposal to have the Legislative Council estimates and financial com-

Continued on page 12

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## Row over use of CCC tapes

From page 1

mittee examine the State's iron ore policy.

But when then-CCC Commissioner Kevin Hammond asked the committee's chairwoman, Greens MLC Giz Watson, to hand over key documents she refused, citing parliamentary privilege, and instead the Legislative Council decided to set up its own investigation.

It was then unclear whether the Upper House inquiry could legally access the CCC evidence. *The West Australian* believes that the select privileges committee established to conduct the investigation, chaired by National Party MP Murray Criddle, gained access to the material and used it in secret hearings in September.

Mr Burke is also believed to have complained to Mr McCusker that Mr Urquhart was able to act as the lawyer assisting the parliamentary committee after doing the same job for the CCC in the hearings this year. Mr Urquhart said yesterday he was unable to comment.

Use of the material appears to hinge on the State's Surveillance Devices Act and the Commonwealth Telecommunications Interception Act under which the CCC applies for warrants.

A spokesman for the CCC refused to confirm that the evidence had been handed to Mr Criddle's committee and referred inquiries to the Upper House. Mr Criddle refused to say whether his committee had gained access to the CCC material.

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**APPENDIX 3**  
**ARTICLES OF 8 NOVEMBER 2007 PUBLISHED IN**  
***THE WEST AUSTRALIAN***



# APPENDIX 3

## ARTICLES OF 8 NOVEMBER 2007 PUBLISHED IN

### THE WEST AUSTRALIAN

THE WEST AUSTRALIAN

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No secrets: Phil Pandal.

## Former MP queries need for secret lobby probe

ROBERT TAYLOR  
STATE POLITICAL EDITOR

The author of a soon to be released book on the WA Parliament, former Liberal and Independent MP Phil Pandal, claims there is no reason for an Upper House privileges committee to conduct hearings in secret.

But serving MPs defended closed hearings into attempts by lobbyists Brian Burke and Julian Grill to influence another Legislative Council committee to inquire into the State's iron ore industry.

The privileges committee is due to report on the matter by November 15 but *The West Australian* revealed yesterday it held secret hearings using evidence the Corruption and Crime Commission provided in September.

*The West Australian* understands high-profile lawyers and businessmen, Mr Burke, Mr Grill and MPs Shelley Archer and Anthony Fels are embroiled in the inquiry which could result in findings of parliamentary contempt over the iron ore plan.

Mr Pandal claimed the evidence should have been heard in public.

"Clearly they should be and the Bowler case demonstrated that they should be taking their evidence in public and then having the clear right to discuss the weight that they're going to attach to it in private meetings, just like an appeal court," he claimed.

Former minister John Bowler and others, including Mr Grill, testified in open hearings to a Lower House privileges committee this year after matters arose in the CCC.

"What happened there (in the Legislative Assembly) is what should have happened in the Council," Mr Pandal claimed. "Unless there's a good reason for a select committee in the first instance to be in private, then they should be public."

But the Leader of the Government in the Legislative Council, Agriculture Minister Kim Chance, and Upper House Opposition Leader Norman Moore defended the right of the committee to hold secret hearings.

"A select committee is there to determine the facts of the matter. A privileges committee probably even more so than most and I believe that if the hearings were open you probably wouldn't get to the truth of the matter, simply by virtue of the fact that the evidence would not be provided in such a forum," Mr Chance said.

Mr Moore said the Council's standing orders on select committees allowed for evidence in camera.

"That's how it's always been to my understanding," he said.

A former president of the Legislative Council, retired Labor MLC John Cowdell, said he would reserve judgment on the committee's decision to conduct its inquiry in secret until he saw the committee report.

But Mr Moore said the Council's select committee "had always met in private" and he saw nothing wrong.

> OPINION

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# Opinion

Secret hearings and impediments to Freedom of Information should set off alarm bells

## Old-style secrecy makes a comeback



ROBERT TAYLOR  
INSIDE STATE

In March this year the Corruption and Crime Commission and the Legislative Council faced off over who had the right to investigate the influence lobbyists Brian Burke and Julian Grill exerted on a standing committee's decision to inquire into the State's iron ore policy.

Mr Burke and Mr Grill were working for a key stakeholder in iron ore hopeful Cazaly Resources, which was battling mining giant Rio Tinto over the rich Shovelanna iron ore prospect in the Pilbara.

That battle was big news in the mining industry. The upstart Cazaly had capitalised on Rio's failure to renew its lease over the prospect on time and had pegged the deposit.

When Rio appealed to the Minister for Resources, John Bowler, he went with his department's advice and terminated Cazaly's claim, returning the tenement to Rio, a decision challenged in the WA Supreme Court.

But in the meantime the CCC had come across evidence that the two lobbyists were pushing for an inquiry into the iron ore industry and wanted to chase that particular rabbit down its burrow as part of the wider inquiry into the activities of the two men, which included the Smiths Beach affair, the Port Coogee

development and property deals in Wanneroo.

In an earlier hearing, Burke associate and Liberal Party powerbroker Noel Crichton-Browne told the CCC that he had asked Liberal MP Anthony Fels, a member of the standing committee, to hold an inquiry into the iron ore policy.

And in February the lawyer assisting the commission, Philip Urquhart, flagged an inquiry into "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". But when the CCC Commissioner Kevin Hammond wrote to that committee's chairwoman, Greens MLC Giz Watson, requesting agendas and minutes from committee meetings, Ms Watson told the CCC that the documents were privileged and not available.

In the end, the Upper House decided to hold its own inquiry into the iron ore proposal and established a select privileges committee of MPs Murray Criddle, Barry House and Adele Farina to do so.

The CCC handed the committee its evidence and Mr Urquhart toddled up the Hill to become the lawyer assisting that inquiry. Instead of the evidence being aired in public hearings down at the CCC, the politicians then held secret hearings.

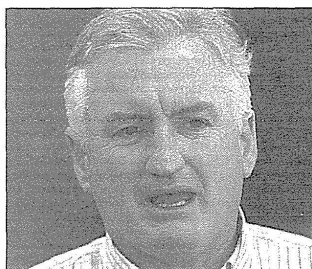
Instead of the daily proceedings being open to the public, as CCC hearings are, including all the questions asked of each witness and transcripts of evidence being on the commission's website, the public remains completely in the dark over



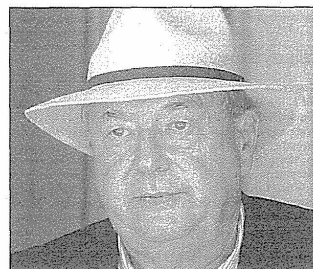
Appointment fanfare: John Sanderson.



Lost her job: Darryl Woolkey.



Media management: Alan Carpenter.



Influence investigated: Brian Burke.

the process. And we're not just talking Mr Burke and Mr Grill, Mr Fels and Ms Archer under the microscope here.

The *West Australian* believes this inquiry has dragged in a number of prominent members of the legal and business communities.

When the committee tables its

**The CCC has enormous powers to intrude on people's lives.**

report, expected to be some time in the next week, it will be interesting to see if all the evidence that has been offered at the secret hearings is produced for all to see. If every question asked and every answer given is available.

The CCC has enormous powers to intrude on people's lives and for that evidence to be handed over to

politicians in order to form the basis of secret hearings should be an enormous concern to all of us no matter who is involved.

Secrecy, however, is making a big comeback in WA. The treatment of accountability watchdogs Darryl Woolkey and Maxine Murray, the rejection of Freedom of Information requests and the enormous amount of money spent by the Carpenter Government on "media management" should all ring alarm bells for those interested in open and accountable government.

Ms Woolkey made no bones about her opposition to changes to the FOI Act, and lost her job to be replaced by public servant John Lightowlers who was seconded from the Department of Premier and Cabinet.

The DPC has rejected an FOI application from *The West Australian* for reports written by Mr Carpenter's \$200,000 appointment to advise on Aboriginal affairs, former WA governor Lt-Gen. John Sanderson, and any appeal will go to Mr Lightowlers.

Lt-Gen. Sanderson has been in the job for over a year, he was appointed with much fanfare and lauded as a community builder, but the public is not allowed to see what he has produced on the basis that it "would reveal the deliberative process undertaken by the special adviser".

Similarly, the Government has rejected FOI applications for the release of the functional review into the Department of Indigenous Affairs by consultant Dawn Casey on the basis that it is a "Cabinet document".

But surely all such documents could be so characterised giving the Government an effective veto over anything it does not want to release and effectively neutering FOI legislation.

After all, the Government had no qualms releasing the functional review report into the old Department of Community Development by former senior health bureaucrat Prudence Ford when it agreed with that report's findings.