



Office of the Director General

DGTO13/358

Privileges Committee
Parliament House
Macquarie Street
Sydney NSW 2000
Attention: Stephen Frappell

Dear Mr Frappell

Inquiry into the 2009 Mt Penny return to order (“Inquiry”)

I refer to my appearance before the Inquiry on 26 August 2013 and to my letter dated 10 September 2013. At that appearance I agreed to respond to the following question:

“Would you agree or disagree that the papers that were not produced in the call for papers were on the whole or significantly papers that pointed to impropriety?....Do you believe that there were a significant number of documents among those found not to have been produced that pointed to impropriety?”

In order to answer this question an examination of the 124 undisclosed documents (“the documents”) listed in the ICAC document comparison index was undertaken. In light of the comments made by the Hon David Clarke and the Chair, this examination was undertaken having regard to the findings made by the Commissioner in Chapter 14 of the ICAC report.

A significant number of the documents relate to the early discussions of areas to be put out for tender, the identification of Mt Penny and ultimately the creation of the Mt Penny tenement. These documents point to the following:

1. The initiative as to the creation of the Mt Penny tenement was generated by the Minister’s office.
2. The Department was not aware of “Mt Penny” as a potential coal allocation area prior to it being mentioned by the Minister’s office.
3. The area that became the Mt Penny tenement originally formed part of the large area known as North Bylong.
4. The Department did not believe it was sufficiently prepared to release the North Bylong area for tender.
5. The area that became known as the Mt Penny tenement was carved out of the large North Bylong area.

6. The Minister's office wanted the creation and release of the Mt Penny coal allocation area dealt with urgently.

In addition:

7. The NSW Minerals Council opposed restricting the tender to small and medium mining companies and wrote to the Minister urging the Government to reconsider its policy position.
8. The Minister's office made inquiries of the Department regarding provision of invitations to several companies, including Cascade Coal, that were not originally invited to tender for the 11 small and medium coal allocation areas.
9. In September 2008 a number of companies, including Cascade Coal, wrote to the Department expressing interest in developing coal areas in NSW.
10. Following an initial limited tender the Department's communication with the probity auditor indicated initially that the government was considering re-opening the tender process to all companies. In a letter to the probity auditor four days later a different Government position was communicated, namely that the tender would be reopened to only the small to medium companies that had written to the Department or the Minister's office.
11. The expression of interest for the Mt Penny coal allocation area was re-opened and the successful tenderer had not been part of the original process.
12. The Minister delegated the function of giving consent to apply for exploration licences, assessment leases and mining leases to the Director General of the Department.

A number of the documents contributed to the Commissioner's conclusion in Chapter 15 of the ICAC report that it was Mr Macdonald who directed that a Mt Penny tenement be created. Further, at page 63 of the ICAC report, the Commissioner concluded that "it would not be good management of the state's resources to rush the decision to create a Mt Penny tenement, or to fiddle with the general size and shape of the proposed North Bylong area to compromise it in a way that could jeopardise the state receiving a large additional financial contribution."

While the above matters do not of themselves demonstrate impropriety they identify issues that may have led to further inquiry.

If you require any further information, please do not hesitate to contact me.

Yours sincerely



Mark I Paterson AO
Director General

13/9/13