

ANNEXURE A

PRIVILEGES COMMITTEE INQUIRY INTO THE 2009 MOUNT PENNY RETURN TO ORDER

Privileges Committee hearing – 24 June 2013

Answers to questions taken on notice by the Director General

QUESTION (pages 3-4 of transcript)

CHAIR: Does it concern you somewhat that a firm of lawyers is retained for the purposes of undertaking a review process of something as notorious, might I suggest, as the Mount Penny tender process and yet essentially in its interim report of November 2011 it comes up with, in a sense, there seems to be nothing wrong?

Mr ECCLES: I am sorry, what is the point of the question?

CHAIR: The point is does it not raise some concern in you that the Government has gone through a process of reviewing the Mount Penny tender process itself and came up with what, in essence, is a nil return—that is, there apparently was nothing to worry about?

Mr ECCLES: Again I am not familiar with the detail but the Government commissioned Clayton Utz to conduct an inquiry; I do not know the specific terms of that inquiry.

CHAIR: Perhaps before the end of today we can provide you with a copy of the report.

Mr ECCLES: The point I am getting at is that I think the concern or otherwise that I might have about how the Government treated that particular report would depend upon the nature of the commissioning and the nature of the content of the report. So I feel a little bit unable to be definitive about whether I should be expressing concern about the treatment by the Government.

CHAIR: Could I invite that my concern relates to what documents were provided to Clayton Utz to allow them to come to the outcome—that is, you might come to the conclusion that they were not provided with documents that would have demonstrated that something potentially quite dodgy went on?

Mr ECCLES: I think the best I can do is to note your concern and take it into account when I have the opportunity to review, in the same way you have, the material.

CHAIR: Excellent. I will provide you with a copy before you leave today.

Mr ECCLES: Thank you.

ANSWER:

- (a) The report by Clayton Utz entitled "Review of Mount Penny Exploration Licence Allocation Process: Preliminary Report" dated 4 November 2011 (the **Clayton Utz Preliminary Report**) is now publicly available:

http://www.trade.nsw.gov.au/data/assets/pdf_file/0006/436830/Review-of-mount-penny-exploration-licence-allocation-process.pdf

- (b) Having refreshed my memory of the report, I cannot accept the premise of the question that was put to me by the Chair of the Committee. The Clayton Utz Preliminary Report was, and was stated to be, only an initial and preliminary report, and it recommends that further inquiries be made. In this regard, sections 5 and 6 of the report identify initial avenues for immediate investigation and refer to the possibility of commissioning a Special Commission of Inquiry or other inquiry with coercive powers. It does not appear that the report's conclusions can be summarised simply as being that "there apparently was nothing to worry about".
- (c) I am advised that Clayton Utz was commissioned to undertake the work by the Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS), and that the Department of Premier and Cabinet (DPC) had no involvement in the commissioning of the Clayton Utz Preliminary Report.
- (d) I first became aware of the existence of the Clayton Utz Preliminary Report when its existence was drawn to my attention by the Independent Commission Against Corruption (ICAC) in December 2011, following a media report which referred to some details of the report.
- (e) At that time the ICAC investigation was already underway into the subject matter of the report. The Clayton Utz Preliminary Report was provided to the ICAC. To avoid possible prejudice to the ICAC proceedings, I directed that any further work by Clayton Utz in relation to this matter should be discontinued in order to allow the ICAC investigation to proceed.

QUESTION (page 11 of transcript)

Mr ECCLES: I can say that, when the material is put before me, I weigh the heft of the document and will ensure that I have thumbed my way through the document. But as to examining the detail of every page of every return, that is not something that I—

CHAIR: That is a good answer but it is not where I was going on this. In that Uralla return, I think it was the Department of Health, in responding, actually provided detail of the search terms that were used in obtaining the documents. Have you seen that done before?

Mr MILLER: No I have not. Although, if such a document is produced, then we would take the view that it needs to be provided in response to the order because usually those orders have that final paragraph that says, "any document" et cetera.

CHAIR: I was going to come to that issue but I invite you, in respect of the future, that you give consideration as to—and you might take this on notice—whether the form of the Uralla response, providing to the Legislative Council the actual search term used, may be an appropriate, in a sense, standard practice, so that, for instance, directors general and the like actually know what procedure has been adopted, as well as the Legislative Council, in finding the documents.

Mr ECCLES: It is a reasonable proposition.

ANSWER:

The proposal raised by the Chair of the Committee is considered in the submission enclosed with these answers (Annexure B).

QUESTION (page 17 of transcript)

Reverend the Hon. FRED NILE: Mr Eccles, when you were speaking earlier about the Mount Penny report that had been produced by a legal company, did you say you had not seen it?

Mr ECCLES: I do not recall seeing that particular report.

Reverend the Hon. FRED NILE: Would that not be a fairly important report that you should see or be given to you? I am puzzled why you were not aware of it.

Mr ECCLES: I would probably need to refresh my memory of the circumstances around the production of that report to be helpful to the Committee.

Reverend the Hon. FRED NILE: Can you take that on notice?

Mr ECCLES: I am very happy to do so.

ANSWER:

I have now refreshed my memory regarding the report, and refer the Committee to my answer to the first question on notice above.

I note that the answers to the questions taken on notice on 11 June 2013 by the Director General of DTIRIS state that DTIRIS was requested by the Hon Christopher Hartcher MP, Minister for Energy and Resources, to commission the report in 2011, and that DTIRIS did so following a request for quotation from three law firms.

QUESTION (page 23 of transcript)

The Hon. JOHN AJAKA: Mr Eccles, you can take this question on notice. Having regard to the information you have now seen and the questions asked of you, if you consider that some changes to the current procedures are advisable, would you advise the Committee on notice as to what you believe are appropriate changes in the circumstances for the Committee to recommend?

Mr ECCLES: If you think it is helpful to hear from us on that matter, yes, we would be happy to respond.

CHAIR: The Committee has a collaborative approach.

The Hon. JOHN AJAKA: Absolutely. We would love to hear your suggestions.

Mr ECCLES: I could even broaden the response on our behalf by saying that there is a collective view from the Senior Management Council about how we might respond corporately and collectively to process improvements and then I will also bring it to your attention.

The Hon. JOHN AJAKA: Especially having regard to the time factors that we discussed earlier.

ANSWER:

I have discussed the matter with my colleagues on the Senior Management Council. Their views have been incorporated into the submission enclosed with these answers (Annexure B).