



INQUIRY INTO THE 2009 MT PENNY RETURN TO ORDER

Privileges Committee tables its report

FOR IMMEDIATE RELEASE

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The report of Legislative Council Privileges Committee into the 2009 Mt Penny return to order was tabled today in the Legislative Council.

The inquiry was established to investigate amongst other matters whether the former Minister for Mineral Resources and Primary Industries, Mr Ian Macdonald, deliberately withheld documents from the Legislative Council in 2009 in relation to the Mt Penny exploration licence and tender process. The Mt Penny matter was subsequently the focus of extensive investigations by the ICAC, and findings of corrupt conduct against Mr Macdonald and others.

While the evidence of Mr Macdonald to the Committee on this matter was neither reliable nor persuasive, the Committee found no evidence that Mr Macdonald sought to interfere with documents provided to the Legislative Council in the 2009. In the circumstances, he had little opportunity to interfere, given that he was obligated to resign from the Ministry by the former Premier, Mr Nathan Rees, only three days after the order for papers was made. Rather, the failure of the Government to comply fully with the 2009 Mt Penny order for papers is attributable almost exclusively to administrative failings within the former Department of Industry and Investment.

The executive summary of the Committee's report is attached. The full report is publicly available on the Committee's website at www.parliament.nsw.gov.au/lcprivilege.

The Hon Trevor Khan
Chair

-ENDS-

Executive summary

In November 2009, the House ordered the production of State papers in relation to the 2009 Mt Penny mining exploration licence and tender process. A return to order was received from the Government later that month. However, in late 2012, following the publication of certain documents by the Independent Commission Against Corruption (ICAC) as part of Operation Jasper, concerns were raised whether the 2009 Mt Penny order for papers had been fully complied with. The House referred the matter to the Privileges Committee in March 2013.

The Committee reported in April 2013 (see Report No. 68 of the Privileges Committee). The Committee found that certain documents identified by the ICAC in a ‘document comparison matrix’ provided to the President should, *prima facie*, have been provided in the 2009 Mt Penny return to order.

This was a significant finding. Since the last of the *Egan* decisions in 1999 concerning the power of the Legislative Council to order the production of State papers, the House has made more than 300 such orders. This was the first time that the House had before it conclusive evidence that an order of the House for the production of State papers had not been fully complied with, as is required at law.

The failure to fully comply with the 2009 Mt Penny order for papers also had profound political implications. The documents that were identified by the ICAC in its ‘document comparison matrix’ revealed, amongst other things, the steps taken by the former Minister for Mineral Resources and Minister for Primary Industries, Mr Ian Macdonald, to create the Mt Penny tenement and to re-open the expression of interest process for the Mt Penny exploration licence. It is a matter of public record that these actions were subsequently the basis of findings of corrupt conduct against Mr Macdonald by the ICAC in its report on Operation Jasper.

On receipt of the Committee’s previous report, the House referred to the Committee terms of reference for a new inquiry into this matter. The terms of reference required the Committee to examine, amongst other things, the reasons for and circumstances leading to the failure to provide documents in the return, the identity of the person or persons whose actions resulted in the failure to provide documents in the return, and the operation of the process for ordering the production of State papers under standing order 52.

In undertaking this inquiry, the Committee took evidence from a range of parties, including former Ministers Ian Macdonald and Peter Primrose, their former office staff, the Clerk of the Parliaments and Clerk of the Legislative Council, the Director General and General Counsel of the Department of Premier and Cabinet, the Director General of the Department of Trade and Investment and key officers of the former Department of Industry and Investment who were primarily responsible for responding to the order for papers in 2009.

The key finding of the Committee is that no evidence was placed before it that the former Minister for Mineral Resources and Minister for Primary Industries, Mr Ian Macdonald, sought to interfere with the response to the 2009 Mt Penny order for papers. While the Committee did not find the evidence of Mr Macdonald reliable or persuasive, the evidence of other more reliable witnesses is that Mr Macdonald did not play a role in responding to the order for papers. Mr Macdonald’s resignation from office on 15 November 2009, just three days after the 2009 Mt Penny order for papers was made, effectively militated against him seeking to influence the documents provided in the return to order by his office or the Department of Industry and Investment.

The Committee also finds no fault in the conduct of Minister Primrose or his Acting Chief of Staff in responding to the order for papers. They responded appropriately and fully in the circumstances.

Rather, the Committee finds that the failure of the executive to comply fully with the 2009 Mt Penny order for papers is to be attributed almost exclusively to administrative failings within the former Department of Industry and Investment. The Department lacked appropriate processes and protocols for managing orders for papers and a number of staff of the Department made critical administrative errors in responding to the order for papers. The Committee highlights in particular the extremely tight timeframe in which the return to order was prepared due to an administrative error in the office of the Director General, and the failure, once the matter was progressed, to direct the order for papers to the Executive Director of the area primarily responsible for the majority of documents relevant to Mt Penny. The Committee notes that ultimately, these failures were the responsibility of the Director General of the Department, who failed both personally and as Director General to respond adequately to the order for papers.

There is no evidence available to the Committee, however, that any officer from the Department of Industry and Investment deliberately took any action or made any decision in order to restrict the documents provided to the House in 2009. Accordingly, the Committee does not believe that any further steps should be taken in relation to the individuals involved.

The Committee does, however, support in this report a number of proposals to improve the processes for the production of State papers to the Legislative Council. The Committee makes a number of recommendations that are applicable to members of the Legislative Council in drafting orders for the production of State papers, to the Department of Premier and Cabinet in coordinating the response to such orders, and to individual government departments and agencies in the provision of State papers.