

Submission

No 9

INQUIRY INTO THE 2009 MT PENNY RETURN TO ORDER

Name: Name suppressed

Date Received: 29/05/2013

Partially Confidential

The Hon. Trevor Khan MLC
Chair
Privileges Committee
Legislative Council
Parliament of NSW
Macquarie St
SYDNEY NSW 2000

CONFIDENTIAL

Dear Mr Khan,

Re: Inquiry into the 2009 Mt Penny return to order

Thank you for the opportunity to provide a submission into the inquiry of the Privileges Committee of the Legislative Council regarding "Possible non-compliance with the 2009 Mt Penny return to order for papers".

I note that you request that I particularly address Part 2 a) to c) of the terms of reference which state:

- a) the reasons for and circumstances leading to the failure to provide documents in the return,
- b) whether other documents held by offices identified in the resolution passed by the House on 12 November 2009 and captured by the terms of the resolution were not provided in the return,
- c) any deficiencies in processes or policies of a minister, ministerial office, department or other agency regarding the identification of documents captured by orders for the production of documents under standing order 52, or the inclusion of documents in a return,

My submission also covers Part 2 d) to g) which state:

- d) the identity of the person or persons whose actions resulted in the failure to provide documents in the return,
- e) any further action the House should take in relation to this matter, including:
 - i. whether a person or persons should be adjudged guilty of contempt,
 - ii. the scope of sanctions that may be imposed,
 - iii. any possible further involvement by the Independent Commission Against Corruption,
- f) guidelines and policies for the process by which ministers, ministerial offices, departments and agencies respond to orders for the production of documents under standing order 52, in light of current guidelines and policies,
- g) and any other related matter.

The Office of the Minister for Mineral Resources and Minister for Regulatory Reform commenced on the 17 November 2009 and ceased on the 4 December 2009. It existed for a total of 18 days.

During this time I acted as the Chief of Staff to the Minister. This was an interim arrangement and I was still attached as personal staff to the Office of the Premier and Minister for the Arts.

As acting Chief of Staff my roles were to:

- Manage the Minister's office, including supervision of staff and control of the Minister's office budget
- Co-ordinate and organise the Minister's parliamentary program.
- Arrange briefings for the Minister
- Oversee events in the portfolio to enable the Minister to be kept up to date in these areas, and
- Liaise with other Ministers, Members of Parliament, agency staff and members of the community.

On 12 November 2009 the Legislative Council approved a call for papers relating to the Exploration Licence of the land now known as Mt Penny. This order includes a 14 day time limit. On the 17 November The Hon. Ian Macdonald MLC was removed from the Ministry by the Premier, the Hon. Nathan Rees MP.

The Department of Premier and Cabinet subsequently directed the query on to the offices of the Hon. Tony Kelly MLC and the Hon. Peter Primrose MLC as the incoming portfolio ministers for Primary Industries and Mineral Resources respectively. The request was sent by the Deputy Director General (General Counsel) of the Department of Premier and Cabinet, Ms Leigh Sanderson.

In discharging my role as Chief of Staff in this matter I sought the advice of the General Counsel. My response was completed on the 23 November 2009 and the final return was received by the Parliament on 26 November 2009. At this time there was one paper relating to Mt Penny within the Office of the Minister for Mineral Resources and Minister for Regulatory Affairs. I had no knowledge of any other documentation and no documentation existed in the office of the Minister for Mineral Resources, the Hon. Peter Primrose MLC.

As Chief of Staff I was provided with the Minister's Office Administration Handbook issued by Ministerial and Parliamentary Services, Department of Premier and Cabinet. The Ministers' Office Administration Handbook is designed to assist Ministers and their staff in the operation of the Minister's office. It is made available to all Ministers and their staff.

The specific guideline relating to records of a Ministerial Office is the General Retention and Disposal Authority – Records of a Minister's Office (GDA 13) found at Appendix A. This policy was issued in 2003 and is still current. This is available online at the DPC website, <http://www.dpc.nsw.gov.au/>.

Section 2.3 of GDA 13 refers to the records of a Ministerial office when a Minister leaves office:

When a Minister retires or otherwise leaves office all records held by the Ministerial office should be disposed of in accordance with appropriate guidelines applicable to the type of records.

GDA 13 outlines the procedure for disposing of documents. The extract is below:

Procedure for Disposing of Records

The table below describes the steps to take to dispose of a Minister's records.

Step	Action
1	Determine whether the records belong to The Cabinet Office or a department or agency within the Minister's portfolio. If the records are Cabinet documents - return them to The Cabinet Office (In accordance with Cabinet Office rules). If the records are departmental or agency records - return them to the responsible department or agency. Note: Records belong to The Cabinet Office, a department or agency if they originated or were registered in these offices and were passed to the Minister's office for action or information. Determine whether the records relate to the Minister's portfolio responsibilities.
2	If yes, go to Step 3. If the records are constituency, party political or personal records of a Minister they are not State records and should be disposed of by the Minister or their representative. Determine whether the records are required as State archives.
3	If yes, go to Step 4. If no, go to Step 5. Prepare records required as State archives for transfer to the custody of State Records. If the format is paper - box and list the records.
4	If the format is electronic - copy the records to appropriate media (eg CD Rom, tape) and list the contents of the CD or tape. Note: Records should be boxed and listed in accordance with the guidelines below. Access decisions must also be made prior to transfer of the records (also discussed below).
5	Arrange collection or delivery of State archives.
6	Destroy paper and electronic records that are no longer required for administrative purposes.

It is my understanding that Ministerial and Parliamentary Services (MAPS), Department of Premier and Cabinet, would provide assistance to the former Minister and their Office to transfer records as required under the State Records Act. I have no information relating to the responsibilities of MAPS or the Department of Premier and Cabinet to respond to Standing Order 52 requests with information contained in former Ministerial Office records beyond that contained in the Ministerial Handbook and reproduced here.

The report of the Privileges Committee titled "Possible non-compliance with the 2009 Mt Penny return to order for papers" contains the returns of the Department of Premier and Cabinet and the Department of Industry and Investment signed by the

authorised representatives. I have no information upon which to comment on the accuracy of these returns.

There is no provision for transfer of records to an incoming Minister regardless of their Political Party affiliation: Instead there are specific protections surrounding the ownership of documentation. GDA 13 states:

Transfer of ownership must be authorised

Regardless of whether a record has been authorised for destruction or is required as a State archive, ownership of a State record must not be transferred to any person or organisation without the explicit authorisation of State Records.

To state clearly - no records relating to the former Minister's Office were available to the new Ministerial office.

The Office of the Hon. Peter Primrose MLC, Minister for Mineral Resources and Minister for Regulatory Reform was located in a separate physical location to the Offices of the Hon. Ian Macdonald MLC in both Governor Macquarie Tower and the Parliament of NSW.

No access was given to the new Ministerial Office to the physical or electronic records of the Minister for Mineral Resources and Minister for Primary Industries.

Corporate knowledge of documentation from the former office was not retained. One staff member of the former Minister was employed by the Minister for Mineral Resources and Minister for Regulatory Reform. This was an administration officer who continued in this role with the Hon. Peter Primrose MLC in his subsequent portfolios.

The Department of Industry and Investment located a Departmental Liaison Officer within the Office of the Hon. Peter Primrose MLC to assist in navigating the Mineral Resource portfolio responsibilities. I do not believe they performed this role in Offices of the Hon. Ian Macdonald MLC.

The Department of Industry and Investment and the Department of Premier and Cabinet were the primary sources of documentation relating to the portfolios of Mineral Resources and Regulatory Reform. The other source at this time was stakeholder information sent to the Office or presented at meetings. No documents relating to the Mt Penny mining exploration licence or tender had been provided.

As at the 17 November 2009 the Office of the Minister for Mineral Resources and Minister for Regulatory Reform had no access to the physical or electronic records of the former Office of the Minister for Mineral Resources and Minister for Primary Industries.

On 8 December 2009 the Premier, Kristina Keneally MP, appointed Ian Macdonald MLC as Minister for Mineral and Forest Resources, Minister for State and Regional Development, and Minister for the Central Coast. Access to the electronic records of Minister Macdonald and his office may have been reinstated by MAPS at this time. Many of the former staff returned to their roles. The Hon. Ian Macdonald MLC and

his office had the opportunity to provide a supplementary return in response to the Standing Order 52 request if omissions in the return were noted.

In preparing this submission I have discussed the issues relating to the creation of the office of the Minister for Mineral Resources and Minister for Regulatory Reform with the former Minister, the Hon. Peter Primrose MLC. I have also confirmed factual details relating to staffing and key dates for the former Premier, the Hon. Nathan Rees MP.

Regards,