

**IN-CAMERA TRANSCRIPT RESOLVED TO BE PUBLISHED BY THE  
COMMITTEE ON 20 JUNE 2013.**

## **PRIVILEGES COMMITTEE**

### **INQUIRY INTO THE 2009 MOUNT PENNY RETURN TO ORDER**

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**At Sydney on Tuesday 11 June 2013**

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**The Committee met in camera at 9.45 a.m.**

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#### **PRESENT**

The Hon. T. Khan (Chair)

The Hon. J. Ajaka

The Hon. J. Buckingham

The Hon. G. J. Donnelly

The Hon. A. R. Fazio

The Hon. J. A. Gardiner

The Hon. M. R. Mason-Cox

**Ordered to be published by resolution of the Committee.**

**CHAIR:** Welcome to the first hearing of the Privileges Committee Inquiry into the 2009 Mount Penny Return to Order. Before we commence the hearing I will address some procedural matters. The Committee is holding today's hearing in camera, which means that at no time will any media or members of the public be in the room. The transcript of your evidence will also be confidential; however, after reviewing the transcript the Committee may decide at a later date to make some or all of the evidence public. Normally the Committee would do so in consultation with you. Witnesses who appear before parliamentary committees are protected by parliamentary privilege. That means that what is said cannot be used against you later in court proceedings.

Our terms of reference require the Committee to inquire into and report on the failure to provide documents in the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013. That document comparison matrix is available on the Legislative Council website of the Privileges Committee.

At the commencement of your evidence I will invite you to make a short opening statement if you wish. If you have copies that you can provide to the members of the Committee it would be greatly appreciated. Members of the Committee will then ask you questions. The Committee has resolved that any answers to questions taken on notice during the hearing must be provided by you within 21 days. Mr Primrose, I remind you that you do not need to be sworn in as you have already sworn an oath to your office as a member of Parliament.

**PETER PRIMROSE**, Former Minister for Mineral Resources, before the Committee:

██████████, Former Acting Chief of Staff to the Minister for Mineral Resources, affirmed and examined:

**CHAIR:** Thank you both for attending today. We recognise that you are appearing entirely voluntarily before this Committee and that you have been kind enough to make submissions which are helpful to this inquiry. We are unanimously grateful for your assistance in that respect. Would either or both of you like to make an opening statement to the Committee?

**The Hon. PETER PRIMROSE:** Mr Chair, we have both discussed it outside and neither of us have a submission. We are happy just to answer the Committee's questions.

**CHAIR:** We are adopting a slightly different approach in regards to questions. Questions will not be strictly time limited. We will just see how it rolls on. Mr Buckingham is the further member of the Committee. He is not here yet, but I am told he is in a taxi now and will arrive shortly. I anticipate that after the Government members have finished he will jump in, perhaps with both feet. From there we will finally move to the Opposition members to ask questions. We will just see how it all flows along.

**The Hon. JENNIFER GARDINER:** Mr Primrose, can you describe the circumstances in which you became the Minister for Mineral Resources?

**The Hon. PETER PRIMROSE:** I was appointed by the Premier and sworn in by the Governor.

**The Hon. JENNIFER GARDINER:** And that was in rather tumultuous circumstances in the overall position of the Government at the time?

**The Hon. PETER PRIMROSE:** The conference of the Labor Party changed the rules of the party enabling Premiers to appoint their own Ministers, a practice that continues and is similar to those in other parties. Accordingly I was invited, if I wished to do so, to become a Minister. I thought about it and chose to take that position. I was very grateful to the Premier of the day for the opportunity and I was then sworn in by the Governor.

**The Hon. JENNIFER GARDINER:** Once you were sworn in did you take over what was virtually an empty office with a clean slate and completely fresh staff? Was there any continuation from the previous Minister's role, particularly in respect of any hand over of ongoing matters or any briefing on outstanding matters or any documents that were still to be attended to?

**The Hon. PETER PRIMROSE:** My recollection is that we actually had an entirely new office. Physically we had an entirely new office. I think we were in the process of trying to recruit the appropriate number of staff. My recollection is that I think we kept an administration officer. That was the only staff member that we kept from the former Minister's office. All of the briefings papers, et cetera, that we received we received from the department.

**The Hon. JENNIFER GARDINER:** When you say an administration officer, what does that actually mean? Would they be handling documents or was it someone handling a diary? What would the administration officer do?

**The Hon. PETER PRIMROSE:** I think answering the phone was primarily the—

**The Hon. JENNIFER GARDINER:** Basically a receptionist?

**The Hon. PETER PRIMROSE:** A receptionist. The person was involved in no way in any aspects of documents or diary, et cetera.

██████████: I believe they handled the office accounts as well, such as paying for stationery.

**The Hon. JOHN AJAKA:** Just so that I can get an understanding: We have the Minister in Mr Macdonald. He is removed as the Minister. You are appointed the new Minister. Is there no handing over of files, documents or briefings so that you can pick up and, if I can use the expression, run with what is occurring?

**The Hon. PETER PRIMROSE:** I think the short answer is yes, that is, through the department. All the briefings, folders, files, et cetera, that I received as Minister were provided by the department, as is the case with all Ministers.

**The Hon. JOHN AJAKA:** To your knowledge would you have assumed or does it in fact occur that the prior Minister or his staff preserve all of the documents that exist as at that time so that those documents are available to you via your staff or via the department?

**The Hon. PETER PRIMROSE:** The briefings that I received were from the department. That is a question you would really need to put to the department, because I frankly do not know what files, briefings, folders, et cetera, were made available to the department from the former Minister.

**The Hon. JOHN AJAKA:** As the Minister, when did you first become aware that there was a call for papers for Mount Penny?

**The Hon. PETER PRIMROSE:** As the Minister, when I was advised by my chief of staff. I think we put the return in about six days after I became Minister, but my former chief of staff may wish to comment on it if that is okay.

**The Hon. JOHN AJAKA:** I am happy for any of these questions to be answered by you or [REDACTED], if he is aware of the answers.

**The Hon. PETER PRIMROSE:** May I just indicate, and as Ms Gardiner alluded to, these were circumstances in which I had not expected to have been Minister. The incidents we are talking about took place over a period of six days, and six days after I became Minister was when the actual return, from memory, went in. At that stage we were busy seeking offices and staff, and reading. I was trying to get on top of the various briefs that were being provided by the department to me.

[REDACTED]: Can you repeat the question?

**The Hon. JOHN AJAKA:** I want to know when the Minister or you became aware that there was a call for papers on Mount Penny and of the need to collate them, to comply and to produce the papers. I understand the Minister said that was done within a six-day period.

[REDACTED]: The responsibility for collecting, collating and passing on the documents would have been with the former Minister's office. I have been involved in changes in portfolios over the years. You send briefings et cetera back to the department and you send cabinet documents back to the Cabinet Office. If anything else falls outside that, it is captured in the criteria that I outlined in my submission. If it needs to go to State Records, you send it on. There is no provision for briefing incoming ministers et cetera.

**The Hon. JOHN AJAKA:** You became aware either the next day or within a few days that there was a call for papers on Mount Penny. What action did you take in relation to that?

**The Hon. PETER PRIMROSE:** Again, I refer that to my former chief of staff. Ministers are not admin people. Matters are brought to Ministers' attention by their staff. I was advised by my chief of staff that the call for papers process had been initiated. I discussed with him—I think very briefly—the process that he would need to undertake and then he undertook it.

[REDACTED]: When I received the letter from the deputy director general of the Department of Premier and Cabinet, I then sought the department's advice on how to fulfil that and then did a search of the office documents. The office documents were fairly small still at that stage. We had just received briefings from the department over a couple of days. There was, I think, nothing but the letter asking for the papers that related to the response that was included and sent back to the Department of Premier and Cabinet for inclusion.

**CHAIR:** Who do you say is responsible for determining whether the former Ministers' ministerial office had papers relevant to the call for paper?

[REDACTED]: I can only imagine the Department of Premier and Cabinet, but I do not have any basis for that.

**The Hon. PETER PRIMROSE:** I stress that the submission I was requested to make was in my capacity as the former Minister for Mineral Resources. It was not my responsibility to determine matters such as those in that role. Under the call for papers I am responsible for matters that were relevant to me and my office at that stage.

**CHAIR:** I think it would be fair to say that when Mr Macdonald was defenestrated it was in circumstances where there were questions about various matters in which he had been involved. Was there no concern on your part that in someone responding to the call for papers the Government would be exposed to embarrassment in terms of what may be unearthed?

**The Hon. PETER PRIMROSE:** The call for papers process came to me as the then Minister for Mineral Resources and requested papers. I cannot recall the exact terms of reference, but it was the standard matters that were my responsibility and we acted accordingly on advice from the Department of Premier and Cabinet.

**CHAIR:** [REDACTED], did you seek a briefing with regard to the Mount Penny exploration licence process?

[REDACTED]: Not that I recall.

**The Hon. JOHN AJAKA:** Did you actually pick up the phone and speak to the then previous chief of staff or the previous Minister to ascertain what documents they had or whether they had produced all the documents?

[REDACTED]: No.

**The Hon. PETER PRIMROSE:** I think it needs to be stated that what [REDACTED] did was to pick up the phone and possibly physically see the people in the Premier's office to ascertain the appropriate process and also the department. That is the appropriate thing to do—to act according to the established mechanisms and rules that were well laid down, and that is what we did. To do anything else would have been contrary to those rules.

**The Hon. MATTHEW MASON-COX:** I refer to the advice you received from the Department of Premier and Cabinet about what to do. What was that advice?

[REDACTED]: I requested advice from the general counsel at the Department of Premier and Cabinet, who was also the deputy director general, Leigh Sanderson. I cannot recall the specifics of that advice.

**The Hon. MATTHEW MASON-COX:** Can you recall what you did?

[REDACTED]: I had a look through the documentation that our office held. There was no relevant documentation apart from the call for papers response, and that was what was returned.

**The Hon. JOHN AJAKA:** I am trying to understand this. When you say you looked through the papers the office held, can you walk me through that? Did you go to a computer or a filing cabinet or did you talk to staff? What did you actually do to ascertain if there were documents?

[REDACTED]: There is a document records system. I cannot remember the software at this time. You search the document records system and ask the other staff in the office if they have documentation that relates to it.

**The Hon. JOHN AJAKA:** Assuming that the records system is on a computer, you go to a computer terminal and find it. Is this documentation that only you and the new Minister would have had?

[REDACTED]: Correct.

**The Hon. JOHN AJAKA:** So none of the computers would have included anything that the former office or the former Minister would have had?

[REDACTED]: No.

**The Hon. JOHN AJAKA:** When you seek advice from the Department of Premier and Cabinet, the advice they give you is that you only go to your computer and do that and not that you should check to see what the former staff had for the former Minister?

██████: No.

**The Hon. PETER PRIMROSE:** Maybe we should clarify that because I think it is important. I understand that the information from the former Minister's office and former Minister's computers was not available to us.

██████: Definitely not. We were set up on the primrose.minister server and that is the only information we had access to; we had no access to the macdonald.minister server.

**The Hon. MATTHEW MASON-COX:** You maintain that you did not pick up the phone and speak to the previous Minister's staff.

██████: No.

**CHAIR:** I would like to clarify something. When you made your approach to general counsel, was that in person or in writing?

██████: It was in person. I knew the person and simply took the letter and asked how to follow the process.

**CHAIR:** Did you have any communications in writing with the director general of the department or anyone within the department with regard to the steps they were taking in response to the call for papers?

██████: Not that I recall, no.

**The Hon. JOHN AJAKA:** It was the same director general; there was no change in director general when there was a change of Minister, was there?

██████: No. I believe it was John Lee throughout that period.

**CHAIR:** The director general of the Department of Premier and Cabinet was John Lee. What about Richard Sheldrake, did you have any discussions with him about the return to order?

██████: I believe that they presented their documents and the director general had signed off that to the best of their knowledge that was the documentation from the department. I think I simply passed that on to the Department of Premier and Cabinet. I cannot remember the mechanism for that, whether it was just noting that it had gone through or if they sent it directly. I cannot recall.

**CHAIR:** Did you retain a copy of the papers forwarded to the Department of Premier and Cabinet—not personally?

██████: No.

**CHAIR:** Did you look at the papers before they were forwarded?

██████: Not in those six days, no. Because it was an accountability of the department I left that all—

**The Hon. JOHN AJAKA:** So within that six-day period you received a bundle of documents.

██████: I cannot recall whether I received a bundle of documents or whether it was noted that the bundle of documents had been sent to the Department of Premier and Cabinet.

**The Hon. JOHN AJAKA:** And you never picked up the phone and asked whether they were all the documents, sought an explanation or ascertained whether it was a complete set of documents?

█: There was a cover letter signed by with the director general stating that it was a complete set of documents. I do not think those questions are required.

**The Hon. JOHN AJAKA:** And you did not keep a copy of that letter or anything else?

█: I did not have a copy of that letter, no. The department had it and it was always accessible to us.

**The Hon. PETER PRIMROSE:** Indeed, you have it in your correspondence.

**The Hon. AMANDA FAZIO:** Do you believe it would be appropriate for a ministerial office to intervene in a department's response to a call for papers?

█: No, I was certainly making sure that it was a departmental response and that there was no interference from our office.

**The Hon. JEREMY BUCKINGHAM:** Why did you seek legal advice?

█: I sought advice from the relevant officer in the Department of Premier and Cabinet rather than legal advice about the process. I had not personally completed one of these.

**The Hon. JEREMY BUCKINGHAM:** So, you sought advice from the deputy director general, Leigh Sanderson.

█: Yes.

**The Hon. JEREMY BUCKINGHAM:** You asked about the process for complying with the order?

█: That is correct.

**The Hon. JEREMY BUCKINGHAM:** You did not ask for advice about your agency's responsibilities in terms of the previous Minister?

█: I had received the letter as the acting chief of staff to the Minister for Mineral Resources and Minister for Regulatory Affairs and I answered on that basis.

**The Hon. JEREMY BUCKINGHAM:** But was the advice you sought from the deputy director general about your responsibilities in regard to the previous Minister? Were you seeking any clarification about whether the Minister's office had a role in supplying documents from the previous Minister's office?

█: I asked what my responsibilities were in relation to the letter. That covered the whole range of what I was required to do.

**The Hon. JEREMY BUCKINGHAM:** What was that advice?

█: The advice was to determine whether the office of the Minister for Mineral Resources and Minister for Regulatory Affairs had documents relating to the call for papers.

**The Hon. JEREMY BUCKINGHAM:** What was the definition of the office?

█: Minister Primrose's office.

**The Hon. JEREMY BUCKINGHAM:** Who provided the information that it was Minister Primrose and not the "Office of Mineral Resources"?

█: As stated earlier, I cannot recall the exact contents of the advice I was provided with.

**The Hon. PETER PRIMROSE:** This is no "Office of Mineral Resources".

**The Hon. JEREMY BUCKINGHAM:** That agency.

**The Hon. PETER PRIMROSE:** There is not an agency. There was a Minister for Mineral Resources, which for 18 days was me. That was different from the former Minister for Mineral Resources as it was different from Minister Hickey, as it was different from Minister Causley. All of them are former Ministers for Mineral Resources or Mines. They are different offices.

**The Hon. JEREMY BUCKINGHAM:** That is what I am trying to clarify. Whose interpretation is it that with a change of Minister the agency changes? Did you seek advice about whether or not you were responsible for obtaining the documents that may have been in the possession of the former Minister's office?

██████: Are you familiar with the contents of my submission?

**The Hon. JEREMY BUCKINGHAM:** Absolutely.

██████: You would note that the submission states that when a ministerial office ceases to exist you hand the departmental records back to the department, you hand cabinet records back to the Cabinet Office and other records to State Records. There is no provision for transfer of records to an incoming Minister's office.

**CHAIR:** Indeed, in this case you did not actually hand anything back because you walked into a blank office.

██████: It was not us handing it back; it was the former Minister.

**CHAIR:** But you were not involved in that process.

██████: At the end of Minister Primrose's office the records were sent back to the department and we sent back to the Cabinet Office—

**The Hon. JEREMY BUCKINGHAM:** I have moved motions in the Legislative Council and the House has resolved to support Standing Order 52 motions previously and documents were provided by a number of Ministers. A Minister would provide documents from that Minister and the former Minister as well. They would search out the documents held by previous Ministers as well. The question I have is you actually sought advice from the deputy director general as to whether or not you had a responsibility to source those previous documents?

██████: The other documents would have been covered in the call for papers that were issued to the department. I cannot speak for these instances you speak of, but I presume that any former ministerial documentation would have been provided by the department to the Minister and it was, therefore, part of their office records. In the six days that Minister Primrose had been Minister that did not occur; we did not have records.

**CHAIR:** I would be right in saying that, for instance, ministerial staff emails would not necessarily be capable of being sourced by the department, would they?

██████: Unless they are copied in to the department, I can only presume not.

**CHAIR:** Unless they are copied in or unless they are to an addressee within the department.

██████: Speculation. I am not sure.

**CHAIR:** Let us work on the basis that there may well be emails in this case that fall into that category. If there is a ministerial staff email that is not addressed to a departmental officer and not copied into that departmental officer the department cannot provide that email, so who would be responsible for sourcing that email?

**The Hon. PETER PRIMROSE:** Mr Khan, I was asked to prepare a submission and appear as the former Minister for Mineral Resources. In that capacity I cannot answer those questions as to procedures within a whole of government. What we are aware of, for example, is that those similar procedures apply now. As the former Minister for Mineral Resources, I received correctly, under Standing Order 52, a call for papers which asked for me to deliver items which were under the care, custody and control of me as then Minister for Mineral

Resources. What we delivered were those items that I had care, custody and control of. I did not have access to any of those other documents that you are referring to.

**CHAIR:** Mr Primrose, I am alive to that fact and I am alive to the terms of the invitation to make a submission, but you are here before this Committee, I suggest, not as the former Minister but as a current member of Parliament, so you are alive to all issues. Can I, therefore, put to you again that if the document is not within your custody or control because it is the former Minister's document or the former Ministerial staff's document, then who is responsible for identifying and delivering that in a call for papers?

**The Hon. PETER PRIMROSE:** Mr Chair, given that I was asked to prepare a submission as former Minister for Mineral Resources, I would be delighted to prepare another paper and another submission to the Committee in another capacity, which would involve me presumably questioning, for example, the current director general, but I am not able to answer questions in that capacity at the moment. In terms of what I prepared and what I was asked to do before this Committee was to outline processes involving my role in relation to the Mount Penny return to order, which I have now provided. I cannot really speculate, and that is all it would be, about other matters relating to what happens with Standing Order 52 in relation to the current Minister, for example.

**The Hon. AMANDA FAZIO:** Mr Chair, it might be more appropriate if this line of questioning was directed to Mr Eccles.

**CHAIR:** It will be.

**The Hon. JEREMY BUCKINGHAM:** I am fascinated by your response, Mr Primrose, in regard to the fact that you say documents held by you and your office. The call for papers requires all documents held by the office. It does not specify or name the Hon. Peter Primrose, the Minister; it specifies the office. This is the line of questioning I was putting to [REDACTED]. Did you receive legal advice from the deputy director general as to that distinction between the current Minister and the former Minister? [REDACTED], did you seek that advice from the deputy director general of the Department Premier and Cabinet as to whether or not you had a responsibility to look for the former Minister's documents?

[REDACTED]: I sought procedural advice and I followed that procedure.

**The Hon. JEREMY BUCKINGHAM:** You did not seek any advice as to whether or not you had a responsibility to obtain the former Minister's documents produced and held by the former Minister in terms of, as the Hon. Trevor Khan said, memos?

**The Hon. PETER PRIMROSE:** I am sorry, they were not accessible to us, Mr Buckingham. We did not have access to those any more than the current Minister would have access to Mr Macdonald's emails, or I had access to Mr Causley's when I was there. They are not accessible to Ministers. That is why there is a defined process set down. In terms of our responsibility, our responsibility and the only access we had were to documents that were held within the then office of Minister Primrose.

**The Hon. JEREMY BUCKINGHAM:** My experience is that I have asked for documents under Standing Order 52 from a current Minister and that Minister has provided documents, including memos and handwritten diary notes and records of phone conversations, so how did you ascertain that those records were not available to you? Who did you contact? What advice did you seek as to whether or not you could access those records, if at all you did do that?

[REDACTED]: I can only state what I have already said. We were told what the procedure was to respond to the order and we followed the procedure. Any other questions about former emails and memos I would refer to the department or to ministerial and parliamentary services within the Department of Premier and Cabinet. They are the only two places I recommend you go.

**The Hon. JOHN AJAKA:** Do I understand what you are saying is this: you sought advice and basically the answer was that whatever documents you had physically in your possession, the Minister's possession, or the new staff's possession while on the committee, that is what you had to produce, full stop, nothing else?

[REDACTED]: Correct.



[REDACTED]

**The Hon. MATTHEW MASON-COX:** I ask Mr Primrose and [REDACTED] this question. Mr Primrose, drawing on your role as a former President of the upper House and understanding the procedures of standing orders, do you think there are any problems with the current system and are there any suggestions you might have in relation to what you learnt as a Minister and as your experience as a former President of the upper House and how they might be improved?

**The Hon. PETER PRIMROSE:** I take the advice of the Chair and give the caveat that I have not prepared a response in relation to this, and, indeed, have not given it any real thought. I will move into that, given your specific question, and say that there seem to be sufficient concerns, such as those raised by Mr Buckingham, about where responsibilities lay and where they stop for that correspondence within Ministerial offices, particularly given the fact that, for example, one Minister's office has no access to e-correspondence from a former Minister's office. Even if I had sought access to that information and said to my chief of staff, "Please get me that information", I have no access to that information. Allied to that, however, is the fact that where does that cease? I go back. As I said, prior to Mr Macdonald there was Minister Hickey. We could go back to Minister Causley. That is why I believe that the department is actually the keeper of that ongoing memory rather than individual ministerial offices, because the department keeps those records, files, folders, et cetera, which are then provided to new Ministers, rather than seeking the advice, because just how far back would it be the responsibility of ministerial officers to keep information data? It just seems to me to be difficult.

Therefore, I put it to the Committee that there is clearly an issue in relation to the delineation of information from Ministers' officers, not only in relation to Standing Order 52s. I would imagine there are other procedures as well. Because as things stand, and I take the advice in your first report, the situation is currently very similar, that ministerial officers are currently operating on that advice, I would imagine, on the same principles. If a new Minister came in now following a reshuffle, or for whatever reason—a retirement—then that same principle would apply, that they would be seeking the advice that was available from the department. I think that is a very good system. I think it is really important that a department give fair, complete advice to incoming Ministers and that they maintain that "race" memory, but given the fact that we also have the other responsibilities—for instance, you have outlined correspondence involving former Minister's officers, particularly electronic correspondence—I am not in a position now to give you any advice as to what should happen, if it is clearly a problem, for instance, as Mr Buckingham, has identified.

As a former Minister, I did not have, even if I had wished it, access to that information. That is why when Standing Order 52 requests came to us, I think I have alluded to why I think answering those and that correspondence is very important. I think it is important because I believe in the role of Parliament and we sought advice, my chief of staff sought the advice, and then acted upon it to the best of his ability in providing, in the six days that we had, the information that we were advised we had to provide. But we had no other information; we did not have the care, custody or control of any additional information. The department and other agencies had that, not my office.

**The Hon. JOHN AJAKA:** Mr Primrose, if I can use the term that the department is the keeper of documents, the shortfall in that proposition of course is that the department can only keep the documents it receives and I think as mentioned earlier if correspondence is occurring between Minister and chief of staff or Minister and staff and between staff and staff and the department is not being cc'd in, there appears to be no access to that documentation under an order 52 unless the Minister and the staff collect all that documentation and provide it, and when you have a changeover of ministry it complicates it even further?

**The Hon. PETER PRIMROSE:** That is precisely the point that I have just alluded to. Electronic correspondence is increasingly important, even back in the dim dark days of 2009 when I was there and I imagine it is even more important today. But at the changeover my office did not have access to any of that information and that is something that I believe would be the crux of what this Committee should be examining.

**CHAIR:** But let us be clear, if it was not an electronic, a soft copy but rather a hard copy document, you would not have access to that either?

**The Hon. PETER PRIMROSE:** Exactly. I am simply suggesting, Mr Chairman—and this is where I go back to my caveat that I have not given this particular matter a lot of thought beyond the fact that it is clear that increasingly electronic information is important but even hard copy information—anything that we had in

my office, that is the advice that was sought and gained, was provided; anything we had care, custody or control over, but we did not have access to any other information.

**The Hon. JENNIFER GARDINER:** Just by way of notation you have mentioned a number of times previous Ministers for Mineral Resources Macdonald, Hickey and Causley?

**The Hon. PETER PRIMROSE:** Yes.

**The Hon. JENNIFER GARDINER:** There was another guy called Eddie Obeid. I guess the same things would apply to accessing his material?

**The Hon. PETER PRIMROSE:** Yes, I take your point, Ms Gardiner. I had no access to his information either.

**CHAIR:** That would have been fun.

**The Hon. JENNIFER GARDINER:** You mentioned you believe in the role of Parliament. Could you give the Committee a sense of how important you believe the power of the Legislative Council to call for papers is in terms of keeping governments to account? How important do you think that particular standing order is in the overall good governance of the State?

**The Hon. PETER PRIMROSE:** Since the various legal challenges involving President Chadwick, et cetera, and having read through those, I think it is exceedingly important that we have a mechanism that has been tested through the courts, whether it is Standing Order 52 or whatever may evolve in the future of the House. One of the roles of the Parliament is to keep Executive Government under some degree of scrutiny and to make it responsible. That is the role of Parliament in relation to Executive Government.

**The Hon. JENNIFER GARDINER:** And it is a particular role of a House of review?

**The Hon. PETER PRIMROSE:** I think that is why I, for instance, have argued that a House of review should maintain its role. For instance, members should not be restricted in terms of things like time limits.

**CHAIR:** I thought you were here in your role as former Minister.

**The Hon. PETER PRIMROSE:** As a current member, taking a point. On matters such as time limits, I think if any Executive Government of any colour seeks to make the Legislative Council into the Legislative Assembly light and if we are simply in the Legislative Council a pale version of the Legislative Assembly, then we will presumably have even less responsibility and reason to exist. One of the other aspects that obviously is of concern in this matter—and I have not thought it through—are the proposed changed arrangements in relation to responsibilities of ministerial staffers under legislation which will soon be before the House.

The fact that the current Executive is proposing a new arrangement in relation to the employment of staff and hence their responsibility in relation to the Department of Premier and Cabinet or whatever the current terms may be, that then may again influence the deliberations of this Committee and that is something people may wish to look at, but the bottom line is: by all means I think Houses of review are important. The public believes they are important and anything which seeks to limit that is something that should be resisted. That is why we took such great care and my chief of staff, I know, took such great care in relation to seeking advice as to the proper processes that should be followed, even though we had gone through that tumultuous time, Ms Gardiner, that you had alluded to. Even though it was only six days into the Ministry we took the time because we thought it was important to do it appropriately and properly.

**CHAIR:** I am very mindful that Mr Donnelly has not had an opportunity to ask questions.

**The Hon. GREG DONNELLY:** No, not at this point in time.

**The Hon. JEREMY BUCKINGHAM:** [REDACTED], you sought the advice from the deputy director general, Leigh Sanderson, in person or on the phone, you cannot recall, and you put the position to them that you had only been in the office for a matter of days and that you did not have access, or as Mr Primrose said, you did not have the care, custody or control. Surely it occurred to you and the deputy director general that the

issue of access to the former Minister's documents was real. Was there any discussion as to whose responsibility it was to access those documents at the time?

██████████: I did not state I put any of those things to the deputy director general.

**The Hon. JEREMY BUCKINGHAM:** You did not raise the issue with the deputy director general of who would be responsible or not?

██████████: I asked: what is the procedure to comply with the letter, the call for papers. That is what I put to the deputy director general and the deputy director general responded with the procedure, which we followed.

**The Hon. JEREMY BUCKINGHAM:** And that procedure was given to you verbally?

██████████: I presume so.

**The Hon. JEREMY BUCKINGHAM:** What do you mean you presume so?

██████████: It was over three years ago, it was 3½ years ago.

**The Hon. JEREMY BUCKINGHAM:** So you complied with the call for papers on the basis of what the deputy director general just said?

██████████: They have procedures. She outlined the procedures in some way. I cannot recall exactly and I followed those procedures. I am not sure what other answer you want.

**The Hon. JEREMY BUCKINGHAM:** I just find it surprising that a procedure that is a very important one would be outlined in a telephone call or in person and it would not occur to either yourself or the deputy director general that there was an issue of access to the former Minister's documents?

**CHAIR:** No, that is not quite fair.

**The Hon. GREG DONNELLY:** Point of order: It is unfair and unreasonable to put questions to ██████████ about the mind of the deputy director general and speculating over what the considerations might be.

**CHAIR:** Sure. The other point is that the conversation that occurred between ██████████ and the deputy director general is in response to a letter that is dated 23 November 2009 which sets out the procedure to be adopted, so it is not simply by way of a telephone call; there has actually been a direction from the Department of Premier and Cabinet to the department that says they are to comply with the return for the call for papers and how they are to do it. The telephone call is in response to that letter.

**The Hon. JEREMY BUCKINGHAM:** But the question is that surely part of that telephone call would have been a discussion as to the documents that you could not access?

██████████: I have already answered.

**The Hon. GREG DONNELLY:** I think ██████████ has been quite clear and specific that what he did was in response to the explanation given to him about the procedure that he was required to follow and he accordingly followed that procedure.

**CHAIR:** Do you agree with that proposition?

██████████: That sounds perfectly reasonable.

**The Hon. JOHN AJAKA:** It is good to say yes or no, so it actually gets recorded?

██████████: Yes.

**The Hon. MATTHEW MASON-COX:** I thought it was a rhetorical question.

**CHAIR:** It was.

**The Hon. MATTHEW MASON-COX:** I understand that you were chief of staff or acting chief of staff to Mr Primrose until 4 December 2009 at which time former Minister Ian Macdonald was reappointed, is that correct?

██████████: Yes.

**The Hon. MATTHEW MASON-COX:** What happened then?

██████████: I am not familiar with the actual employment status I enjoyed for the next week or so, however I then continued on as the chief of staff for Minister Primrose in his role as Minister for Small Business, Volunteering, Youth and Minister Assisting the Premier on Veterans Affairs and I continued in that role I believe until February 2010 where I left the service.

**The Hon. MATTHEW MASON-COX:** When you say you are not sure, what weren't you sure about?

██████████: I am not sure of the exact status. I certainly know I was still being remunerated for my time but I am not certain exactly what my—

**The Hon. MATTHEW MASON-COX:** Did you hold any handover with the incoming Minister's office or chief of staff?

██████████: No, but I can tell you that I sent all departmental records back to the department and all Cabinet records back to Cabinet and left from there.

**The Hon. MATTHEW MASON-COX:** Mr Primrose, if I could ask you—and this is perhaps drawing on your wider experience as former President of the upper House and alluding to those circumstances in which former Minister Ian Macdonald came back as Minister for Mineral Resources—do you think there is any obligation, be it legal or ethical, upon former Minister Ian Macdonald once he reassumed the role as Minister for Mineral Resources and of course being in a position to understand where there may be certain information arising from his office or elsewhere that came about in his former duties before he was reappointed, upon which he perhaps should make a supplementary return alluding to those documents once he assumed the position as Minister again?

**The Hon. PETER PRIMROSE:** It is an interesting legal point as to whether or not a ministry continues as such. For example, would Mr Macdonald's office have access automatically to all of the emails of former Minister Macdonald? There is a whole range of very complex legal arguments there. I would imagine if I was in that position, and here with all the caveats I gave earlier, I would probably feel obliged to have put in a supplementary submission under those circumstances but I stress to you that this is simply a gut response. One of the things I would do is I would seek advice from the same people in the Premier's Department as per responsibilities, liabilities and particularly precedents and then seek to act on those. But off the top of my head I think I would be looking at putting in a supplementary response.

**CHAIR:** Could I raise this and perhaps ██████████ might be in as good a position. When you got to the end of your time and you sent documents back to the department and you sent documents off to the Department of Cabinet and Premier, there is a third category of documents, is there not, apart from those that go to Cabinet and those that go to the department and those are the documents that form State records and are sent off to State Records, to the Archives, is that right?

██████████: That is right.

**CHAIR:** I am not suggesting that you might in that short time have had documents that fell into that category.

██████████: That is right. I think I outlined the rules, as I understood them, in my submission to that and where the transfer of ownership of those documents comes and I did not see any provision where we would have those records. I am not exactly sure how you would have got them.

**CHAIR:** The question that arises from Peter's last response is if documents have gone off to the department, documents have gone off to DPC and documents have gone off to State archives, when Minister Macdonald comes back he would not have access to the documents that had been distributed, would he, so he is not actually in the same position that he was before his departure?

**The Hon. PETER PRIMROSE:** Hence my caveat that the question I was asked was would there be a moral argument for doing so? But I have stressed that if I was in that circumstance I would be seeking advice as to principles, practice and law as to even whether it was possible. I just do not know.

**The Hon. JEREMY BUCKINGHAM:** At the end of your submission you say that you have confirmed factual dates relating to the premiership of Nathan Rees. Who did you do that with? Did you do that with Nathan himself?

██████████: With Nathan, yes. He called me and asked for a couple of the dates of when various transfers had occurred.

**The Hon. JEREMY BUCKINGHAM:** So you confirmed with him—

██████████: He rang me to confirm that something happened on X date, which are usually very well-known dates, but I presume I am a little bit better at Google than the former Premier.

**The Hon. JEREMY BUCKINGHAM:** He rang you to confirm on what date—very recently?

██████████: Whilst I was preparing the submission, hence I included it during that. I thought it was relevant for this and I simply put it there just so he knew that they are the communications I had in preparing the submission—it was simply for your information.

**The Hon. JEREMY BUCKINGHAM:** But it is not clear from that. You said you confirmed them in relation to that time but you actually confirmed them with Nathan Rees?

**CHAIR:** No, the other way round.

██████████: Nathan rang me to confirm some dates, on what dates certain people—

**The Hon. JEREMY BUCKINGHAM:** But your submission says the opposite.

██████████: I think I submitted this quite late. It was sent to the wrong address, I got it very late, I rang up and corrected my address; I think I sent it about 2.00 a.m. in the morning. That was the last thing I wrote.

**The Hon. JOHN AJAKA:** Put simply, Nathan rang you to ask you, for example, what date did the change of premiership occur?

██████████: Correct, exactly.

**The Hon. JOHN AJAKA:** You googled it, found the answer and told him.

██████████: I actually had it written down already, but yes, that is right.

**The Hon. JEREMY BUCKINGHAM:** Is that what he was asking you?

██████████: Correct.

**The Hon. JEREMY BUCKINGHAM:** When he stopped being Premier?

██████████: I do not think the stopped being Premier was the date; perhaps the date that Minister Macdonald had been first removed. I think the date that Mr Macdonald had then been sworn in again, subsequently he did not have that date to hand.

**The Hon. JEREMY BUCKINGHAM:** Did you discuss other matters relating to the standing orders?

[REDACTED]: No. I confess the only other thing we discussed was rugby league related, which is not quite relevant. He is a Parramatta fan; it is not relevant this year.

**CHAIR:** I thank you for coming along. It has been most helpful; both submissions were very helpful. This issue of the handover is clearly a matter that we are to juggle with. Can I make the observation that no positive case has been put against either of you in that sense, so that your evidence has been of assistance as opposed to for any other purpose and I want you to leave here with that understanding of the circumstances. With that said, as previously indicated, the transcript of your evidence today will be confidential. However, after reviewing the transcript the Committee may decide at a later date to make some or all of the evidence public.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**The Hon. PETER PRIMROSE:** For mine, I have no problems about publishing it as widely and as far as you wish. I would only again like to indicate that my submission was specifically in relation to those 18 days; as were my comments here. Any broader comments that I have made are done literally at the request of the Committee or off the top of my head and if I had had longer and a period of reflection I may have come up with some other ideas, suggestions or other caveats on those. But having said that, I am very happy for my submission and comments to be publicised. [REDACTED]

**CHAIR:** [REDACTED]. Thank you both, it has been very useful.

(The witnesses withdrew)

**MARK IAN PATERSON**, affirmed and examined:

**CHAIR:** Mr Paterson, good afternoon and welcome. My name is Trevor Khan and I am the Chair of this Committee. The Committee is holding today's hearing in camera, which means that at no time will any media or members of the public be in the room. The transcript of your evidence today will also be confidential. However, after reviewing the transcript the Committee may decide at a later time to make some or all of your evidence public. Normally the Committee would do so in consultation with you. Witnesses who appear before parliamentary committees are protected by parliamentary privilege. This means that what is said cannot be used against you later in court proceedings.

Our terms of reference require the Committee to inquire into and report on the failure to provide documents and the return to order tabled in the Legislative Council on 26 November 2009 concerning the Mount Penny mining exploration licence and tender process. This includes documents identified in the document comparison matrix provided by the Commissioner of the Independent Commission Against Corruption and tabled in the Legislative Council on 14 March 2013. I understand that you probably have a copy of that but certainly it is available on the parliamentary website for the Privileges Committee.

At the commencement of your evidence I will invite you to make a short opening statement. If you have copies of that statement to provide to members of the Committee, that would be greatly appreciated. Members of the Committee will then ask you questions. I have a couple of reminders: firstly, I remind everyone to please ensure that their mobile phones are turned off; and secondly, with respect to the return for questions on notice, the Committee has resolved that any answers to questions taken on notice during this hearing must be provided within 10 days of today. Would you like to make an opening statement to the Committee and if you have copies, could you make them available?

**Mr PATERSON:** I do not have copies of the statement, Chairman. I would make a number of observations to start with and then I am happy to try and respond to questions from the Committee. I would note for the record that I was not the director general at the relevant time that the Standing Order 52 notice was issued nor was I a director general at the time that it was responded to, nor was I in the New South Wales public sector at any time during the period in which any of the issues associated with Mount Penny were raised so I do not have first-hand knowledge of all of the activities that took place at the time nor have I attempted to make myself aware of every document that was prepared at the time.

I have not read all of the transcripts associated with the ICAC proceedings, although many of my people no doubt have because we have been involved at different levels within the organisation over a long period of time, both in the lead-up to the hearings and during the hearings. The Standing Order 52 was provided to us on 13 November 2009. We had to respond to that request by 20 November. As you are aware, responses to Standing Order 52s come from the Department of Premier and Cabinet so we had to submit our response to Premier and Cabinet and they then submitted a formal response to the questions that were raised and I think from your report the Committee received that response on 26 November.

But in the time that we had available, which was seven days to produce that document, we provided the documents that were identified as a result of the search that was undertaken at the time. There has been a matrix prepared comparing documents that were discovered by ICAC and compared that with the documents that were provided to us in response to the Standing Order 52. It is worth noting that the ICAC notices that we received to produce documents were incredibly broad; there were many of them and they were provided over a long period of time. In the majority of cases the average time that we had to respond to ICAC requests for documents were longer than the time we had available to respond to the call for papers in November 2009 and in many cases the ICAC inquiries sought entire files or entire email accounts. So they sought everything and then had a very long period of time to be able to examine every document that was in the material that was provided to them.

Often I think some of these situations are viewed with the benefit of hindsight; people look at documents that might subsequently have been discovered—for example, by way of an ICAC process in this case—and compare that with the documents that were discovered as part of a search process and a gap has been found between the two. I think that that is entirely understandable; many of the documents that have been identified as part of the ICAC examination, as I have said, they took whole files, whole email accounts and then went through every document that existed in those accounts and had a very long period of time and a very significant amount of resources available to it to undertake that task.

Many of those documents did not refer to Mount Penny, nor did they refer to the exploration licence. So a search undertaken by us in responding to the Standing Order 52 request would have done so in terms of the request and not always produced every document that might otherwise have been discovered by a separate process. But I do not suggest that that is the case in relation to every document, and a formal submission that we would put before the Committee will clearly address that issue. What we had hoped to do in a way that may assist the Committee is to undertake an independent investigation internally ourselves of the process that we went through at the time and to identify both in relation to process and in relation to where and how documents were held to determine whether there was a deficiency in process or whether it was just the nature of the request and how we then undertook the search that we did to produce the documents at the time.

It was our intention to get an independent law firm to undertake that examination and I wrote to the chair in preparation for these proceedings indicating an intention for us to do that if it was the will of the Committee that we should proceed with such an inquiry and I suggested some loose terms of reference that we would have that independent group examine. We have been to the marketplace to select an appropriate firm to undertake the task but we have not commenced that task until such time as this Committee considers the request and we can then proceed to undertake that examination. We do so both to assist the Committee in its deliberations and also for us to be able to examine in detail the process that went on.

Because these matters have been the subject of ICAC reviews, we have sought to respond in every way where we could to requests from ICAC, but we have not sought to unpack all of these issues given the nature of the investigative processes that ICAC has been pursuing. So we have not sought to undertake this until such time as the issue was raised with us by your Committee. So, as I have said, we would like to be in a position to assist the Committee. We would like to properly question ourselves in terms of looking at what it is we did at the time, how we did it, where there are gaps between our return to order on the documents and the materials that were discovered by ICAC, to be able to identify where those differences are and why those differences occurred and then be able to formalise that in a submission to the Committee.

There are some observations that I would like to make in relation to the process of the Committee's operations, but I might leave that until a bit later in the proceedings and respond to questions in relation to the first part of what I have said and then deal with the issues associated with the processes of the Committee a little bit later.

**CHAIR:** It is the intention for Government members to ask questions first, then it will be, on behalf of the crossbench, Mr Buckingham's opportunity to ask some questions and then we will move on to the Opposition members. Strict time limits do not apply here; it is more of a collaborative process on this committee than perhaps on some others. There are some preliminary questions that were drafted that are perhaps appropriate to ask that deal with the Committee.

**The Hon. JENNIFER GARDINER:** To kick off, to give us a picture of the background to this, could you tell the Committee when were you appointed the Director General of the Department of Trade and Investment?

**Mr PATERSON:** First of June 2011.

**The Hon. JENNIFER GARDINER:** Can you tell the Committee how and when did you first become aware of the issues which led to this inquiry, that is, the discrepancy between the documents produced to the ICAC compared with the documents produced in the return to order to the Legislative Council of 26 November 2009?

**Mr PATERSON:** I could not give an accurate response to that. I was conscious that there were questions raised during the ICAC hearings which identified that there were some gaps between what we had produced in the return to order and documents that had been discovered by ICAC, because it was raised in the evidence of witnesses who had been called from the department where there were differences between the documents raised. Obviously it is during the period of time that the ICAC hearings have been taking place but it is not something that I recorded when I was first aware of it, and I was first aware of this Committee's considerations in reading the morning press and I subsequently received correspondence from the Committee.

**CHAIR:** The department undertook a review of the Mount Penny exploration licence allocation process during 2011, is that correct?

**Mr PATERSON:** I believe that is the case.

**CHAIR:** Was the firm Clayton Utz retained for the purposes of undertaking a review process?

**Mr PATERSON:** Clayton Utz was engaged to undertake a process. That was not a process instigated by me; in fact, I would check to see who formally commenced that process, Chairman. I am aware that Clayton Utz did undertake an examination and I was not involved in the commencement of that examination.

**CHAIR:** But you were the director general at the time when the preliminary report dated 4 November 2011 was handed down, were you not?

**Mr PATERSON:** Yes I was.

**CHAIR:** And I take it that you read it?

**Mr PATERSON:** I think that is a reasonable conclusion.

**CHAIR:** I would hope so.

**Mr PATERSON:** On the basis that there are probably tens of thousands of documents that have crossed my desk in the time that I have been director general, I do not know that I could say with absolute confidence—I could not list every document I have read during that period of time nor can I say with absolute confidence that I have read every document or every word in every document, but I can reasonably confidently assert that yes I am aware of the report from Clayton Utz and I would have read part, if not all, of that document.

**CHAIR:** Can we just at the moment take it that you are taking on notice the question of who commissioned the report? Can you also take on notice what the specific terms of reference were that were provided to Clayton Utz and also the date when those terms of reference were provided to Clayton Utz?

**Mr PATERSON:** I am happy to.

**CHAIR:** To save time and for accuracy purposes the secretariat will provide you with a list of any questions taken on notice. What I invite you to consider is that recommendation 6 in that report says, "The following observation at the start is made. No potential issues of breach of trust or wrongdoing in the allocation of the Mount Penny exploration licence arise on the basis of the documentation provided to us." In the light of what we have now seen before ICAC, would you like to consider what actual documentation was provided by your department to Clayton Utz for the purposes of preparing that report?

**Mr PATERSON:** I would have to take that on notice.

**CHAIR:** Thank you. Are you aware that the preliminary report, including that apparently there was no breach of public trust or wrongdoing in the allocation of the Mount Penny Exploration Licence [EL], is actually still available on your department's website?

**Mr PATERSON:** No, I am not aware of it.

**CHAIR:** It is an interesting document in the context of what seems to be coming out of the Independent Commission Against Corruption [ICAC].

**Mr PATERSON:** I note that ICAC is still to issue its findings. There has been a lot of reporting and a lot of commentary but we await the conclusions to be drawn from that evidence and that commentary from ICAC.

**CHAIR:** You have indicated, I think, that you have had a look at some transcripts. Did you have a look at transcripts of evidence given on 16 November by Mr Hawkes, of your department, with regard to his interaction with the Minister's office?

**Mr PATERSON:** I cannot say I have.

**CHAIR:** I invite you to go and read that and at the same time would you like to go and have a look at the evidence of Mr Gibson from the Minister's office, given on 19 November to ICAC? What I want to suggest to you, Mr Paterson is, they give a flavour to the circumstances in which the genesis of the EL arose. That is, an invitation or a direction coming from the Minister's office to Mr Hawkes and then involving others to provide details on Mount Penny.

**Mr PATERSON:** I am happy to take up your invitation. I do not know where it would take me, in terms of any subsequent evidence that I might give, the fact that I might read somebody's view from the transcript. I do not know how that takes us anywhere; I do not know how that assists me, in terms of assisting the Committee. But if you want me to read it, I am happy to go and read it, but I do not know where it takes me.

**CHAIR:** Read it first and then you might glean.

**Mr PATERSON:** It cannot change the facts. It cannot change the fact that I was not here at the time, so I could not pass judgement on that evidence without undertaking a much more detailed examination of the circumstances that might have—

**CHAIR:** Mr Paterson, I think it was on 13 February 2012, you provided what I think one could describe as a first return to the section 22 notice that was issued by the ICAC, is that correct?

**Mr PATERSON:** I would check the detail.

**CHAIR:** You provided, I take it, a bundle of documents was it?

**Mr PATERSON:** As I said, tens of thousands of documents come across my desk. I could not tell you whether I produced a bundle of documents for ICAC on 13 February 2012.

**CHAIR:** Let us not be too precise about dates. You made a first return of documents to ICAC in response to a section 22 notice. I do not think you have probably dealt with thousands of those, so can you remember the circumstances of providing a response to the section 22 notice?

**Mr PATERSON:** As I said, I cannot give you direct evidence because I do not recall. And the reality is that I have dealt with correspondence from ICAC on almost every week in the time that I have been here. So, can I precisely recall a document, without going to the files, on a particular date, in response to a particular component of this inquiry? No, I cannot.

**CHAIR:** That is not what I was asking. Can you remember, in response to the section 22 notice, giving a first return?

**Mr PATERSON:** No.

**CHAIR:** No.

**The Hon. JENNIFER GARDINER:** Mr Paterson, you were telling us that you first became aware of the issue which led to this inquiry via the media, et cetera. Once you found out about the discrepancy between the documents produced to ICAC, compared to those produced to the House, what did you do then? Did you speak to anyone in your department, for example, about that discrepancy?

**Mr PATERSON:** I have spoken to officers in the department. As I said, I was loosely aware of a discrepancy, without knowing the precise extent of the discrepancy, I was loosely aware of the discrepancy during the hearings that were being undertaken by ICAC. I read then, in the newspaper, of the extent of differences between what had been provided under the standing order 52 and the documents that had been discovered by ICAC. And, once I received the notification from the Committee, I spoke with the secretary of the Committee about a potential approach that we might undertake to have a look internally to examine in detail, so that it was not just a point in time examination but to look at the detail of what we had done, who had undertaken what activity in responding to the standing order 52 and then being able to provide the Committee with an answer as to why there was a gap between the two.

**The Hon. JENNIFER GARDINER:** Who did you talk to about the discrepancy? Did you ask people in your department to try to explain the discrepancy, the extent of the discrepancies and if so, who were they and what was their answer?

**Mr PATERSON:** I certainly had a discussion in relation to it with my chief legal counsel inside the department. I would have had discussions with some other officers at the time and, as I said, I had had discussions whilst the hearings were proceeding before ICAC because evidence or questions had been raised and reported in the public environment about the gaps between the documents. I was aware, from earlier enquiries, that some of the documents that had been discovered by ICAC were documents that did not refer to Mount Penny or did not refer to that exploration licence by name or number but when you were able to look back and see a variety of documents, you could see a different pattern of behaviour and I do not think that all the documents discovered by ICAC were documents held on our files.

**CHAIR:** Can I say in regard to that, that one of the key documents—one of the very key documents—that was not produced is a document dated 9 May 2009 from Graham Hawkes to Jamie Gibson. It is sort of like the original document and it is headed, "Coal Reserves in Mount Penny Area of Bylong Valley". It could not be clearer what it is, in terms of its reference and yet, it was not produced.

**Mr PATERSON:** And what we need to do is to ascertain why it was not produced. Where was it held? How was it filed? Who held it? And we need to examine the process that we undertook to identify what documents we held in response to the standing order 52. Now, the reason that I suggested an independent inquiry be undertaken in relation to that is so that the Committee had the confidence that it was not us judging ourselves but that we were looking at the processes that we applied at the time, because the ICAC is focussed on an element of this. This is us asking ourselves: What process did we follow? Who did what when? What did they search? How did they search it? What search terms did they use in relation to the search? What documents did it produce? Why did it not produce other documents that are in the matrix?

**CHAIR:** But Mr Paterson, the document I have just referred to, to which I will give an identifier of J9 because that is the ICAC identifier, is a document that you produced to ICAC on 13 February 2012. So you were able to, on the face of it, identify that and I will suggest to you, on 13 February, 55 other documents which were not included in the call for papers. So what we are confronted with is material provided by us, both in the matrix and also in other material from ICAC, that identifies you as the source of the material.

**Mr PATERSON:** Yes.

**CHAIR:** So, in a sense, you are here—you can explain to us how you were able to find the material and produce it to ICAC.

**Mr PATERSON:** No, I cannot and it is not reasonable to expect that I could, because I have not—and quite intentionally have not—gone back and had a detailed examination of what was produced and the process that led to the production or non-production of documents back in 2009. I was not there, I have not looked at the process. The reason that I came to the Committee was to suggest to you—

**CHAIR:** No, that is not what I put.

**Mr PATERSON:** But you are saying that I was able to find a document in 2012 that was not produced in 2009. I accept that. What I cannot answer for you is why it was not produced in 2009.

**CHAIR:** That is a different question, Mr Paterson and I entirely agree with you on that. But what you can answer is, how you were able to find that J9 document and the 54 other documents that you were able to produce on 13 February. I might say that there were two or three other dates in which you provided further returns to the section 22 notice. But I am essentially asking you, what was the process you went through to get these documents?

**Mr PATERSON:** We would have undertaken an appropriate search of all of our records that were held by us at the time that we responded to the section 22 notice. By which time there had been a whole series of requests for production of documents. I cannot explain to you why we were able to produce a document in February of 2012 that we did not produce in 2009.

**The Hon. JEREMY BUCKINGHAM:** Then why was it that you were unable to find—you have said you were unable to find those documents in 2009, but you were also unable to find those documents in 2011. The Clayton Utz report that has been provided repeatedly mentions the paucity of information that was provided to it. It lists what was provided to that reviewer and none of these documents were provided then. So it is not only in 2009, it was also in 2011, and it actually says in the report, "one lever arch file" of documents was provided. So, how is it again that in 2011, when there is this review done, a review of the Mount Penny Exploration Licence, that these documents are not provided but then, when ICAC comes knocking, all of a sudden they are coughed up.

**Mr PATERSON:** I think that is an unfair description of both what I understand the position to be and what I said earlier and that is that ICAC had an opportunity to call, and did call, for whole files. They called for monstrous volumes of material that we were obligated to provide and they then had a detailed examination of those files. So they took whole email accounts, not selectively looking for a particular file on a particular topic. They took whole files, whole records of email accounts for individuals. So they got to see every document that had been in and out from an individual's email account. They then crawled all over those documents. Would we have been able to do that in a six or seven day turn-around in 2009, in response to a court order? No, we could not.

**CHAIR:** If you put into Outlook, or any other email program, the words—particularly Mr Hawkes' one—the words "Mount Penny", you would have got some of the emails.

**Mr PATERSON:** And what I do not know, and that is why I intentionally did not commence the investigation prior to appearing before the Committee today, to ensure that you were comfortable with me undertaking the inquiry that was proposed. I have intentionally not gone back to look at and potentially taint any examination that would look at what we did in 2009. My understanding of what was done in 2009 is that they would have searched TRIM records, because TRIM is the document record management system that operates in the department. In fact, when I came to the department we had six TRIM systems because of the combination of the departments that had been put together and those TRIM systems did not talk to each other. We had a complex mix of different IT platforms, different TRIM record systems, different finance and accounting systems and different payroll systems. We did not have a single system; we did not in fact use Outlook. We still do not use Outlook; we use a thing—

**CHAIR:** I use that as an example, if you look back at the transcript.

**Mr PATERSON:** —called Lotus Notes in parts of the department. When I started there we had a thing called GroupWise, which was another system. We had a variety of not the most sophisticated IT platforms and we had a number of TRIM systems, so I do not know what the nature of the examination in detail was that was undertaken at the time and I have intentionally not asked that question, explicitly, because what I proposed to the Committee was that we undertake that examination using an independent legal firm to be able to ask the questions as to what we did and why we did it, and where were the documents held that have been identified and subsequently produced and why were they not discovered in the first process. If the Committee is asking did I personally, because Mr Buckingham is saying "you" to me, in response to his "you", I did not, because I was not here.

**The Hon. JEREMY BUCKINGHAM:** But you were here in 2011 when this was—

**CHAIR:** No, he was not here when that report was commissioned. That is his evidence.

**The Hon. JOHN AJAKA:** Could I ask you to leave aside 2009 for one moment and the Independent Commission Against Corruption grabbing very large bundles of files and dealing with them their way? Let us go back to step one. You become the Director General, you are aware of the section 22 that is served on your department by ICAC when you are the Director General. I assume—please correct me if I am wrong—that you then undertake a process to try to establish if there are any documents that exist in the department. You then find those documents and produce those documents to ICAC. Am I right so far?

**Mr PATERSON:** Correct.

**The Hon. JOHN AJAKA:** What I would like to know is the process that you undertook to get to that point. Who did you call in, who did you speak to, what did your staff do, how did they then locate those documents?

**Mr PATERSON:** I am happy to go back and try to recreate a time line if that is either helpful or even feasible. At the time I would have had all of the ICAC questions identified, recorded. We have a common officer who is responsible for coordinating all requests for information, a fellow by the name of Mr Ron Taylor who deals with our Government Information Public Access [GIPA] requests, standing order 52 requests and requests for information that come from ICAC. Then we would have undertaken, based on that, an examination of all of the records that we held.

**CHAIR:** How long has Mr Taylor been doing that job?

**Mr PATERSON:** Some time.

**CHAIR:** Thanks. Can you be more precise than "some time"?

**Mr PATERSON:** No, I cannot be more precise. I have been there two years, I have 8,000 people. Can I tell you how long a person has been in a particular role doing a particular job? No I cannot. I am happy to find out, if it is important.

**CHAIR:** Right. Thank you.

**The Hon. JOHN AJAKA:** Can you take it on notice?

**Mr PATERSON:** I am happy to. I am here to try to help the Committee, not to be singled out to try to quiz me in relation to detail that I would not have come here prepared for. I am happy to respond to your questions, Chairman.

**CHAIR:** Mr Paterson, quite frankly an appropriate answer is, I would suggest, "I don't know but I will find out for you. I will take it on notice." An answer of "some time" can only be taken as unhelpful at best.

**The Hon. JOHN AJAKA:** What I am trying to ascertain, and I know you are going to take this on notice and we will come back to it in a moment—I want you to imagine this situation: After you get the section 22 you give some instructions to your employees and they discover the documents in a very easy fashion and the 50-plus documents are put together fairly promptly and then they come through. That then allows me to ask—if not you because you were not there then someone who was there—why is it that Mr Paterson and his team can find those documents in a very prompt easy fashion and yet in 2009 and in 2011 and everywhere in between those documents could not be found? That is what I am trying to ascertain.

**Mr PATERSON:** And I cannot answer that question and I have not gone back to unpack the detail of what happened in 2009. What I have proposed—

**The Hon. JOHN AJAKA:** I am not asking you to do that, Mr Paterson.

**Mr PATERSON:** That is what I was proposing that we actually do—to go back—

**The Hon. JOHN AJAKA:** Can we just focus on what I am asking you please? If you need to take this on notice do so. I want to understand the process from when you became Director General, first received the section 22 and you and/or your department produced those 50-plus documents to ICAC, including document annexure—

**CHAIR:** J9.

**The Hon. JOHN AJAKA:** —J9 that was mentioned by the Chair, and I understand even subsequent documents were produced on at least one or two more occasions. What were the processes involved? How did you get to that point?

**CHAIR:** Can I correct that? It is not J9, it is document 41.

**The Hon. JOHN AJAKA:** That will then, I believe, assist the Committee enormously in determining, by asking other witnesses, why you were able to achieve something—I mean this in a complimentary way, not as an attack—that clearly was not achieved by your predecessors.

**Mr PATERSON:** I am happy to examine the process.

**The Hon. MATTHEW MASON-COX:** I have a few more questions, perhaps for you to take on notice. Would you be able to confirm to us when your department or you received the section 22 notice from ICAC and the dates of the returns to ICAC—I understand there were more than one—so we can understand the time frame it took to compile the responses to ICAC? Would it be possible also to get a copy of the section 22 notice? I am just asking the question.

**Mr PATERSON:** I can examine that. I do not know whether we are able to provide it or not.

**The Hon. MATTHEW MASON-COX:** You can perhaps give us some advice on that. That would be good.

**Mr PATERSON:** I am understandably extremely cautious in responding to any of the issues associated with ICAC.

**CHAIR:** Aren't we all?

**Mr PATERSON:** The thing that I learnt from day one was that with ICAC inquiries we needed to respond to I could not talk to too many people about the requests we received so I did not in detail examine with a broad range of people the issues that came in. We followed a reasonably straightforward process of me relying on officers that had responsibility in these areas in seeking advice on how we responded and the discovery of documents.

**The Hon. MATTHEW MASON-COX:** Have you responded to a standing order 52 request from the Legislative Council in your time as Director General?

**Mr PATERSON:** I think the answer to that question is yes.

**The Hon. MATTHEW MASON-COX:** I just want to understand the typical process for a response to a standing order 52 request. What happens? How do you become aware of it and what do you do next?

**Mr PATERSON:** I do not know that there is a typical "how I become aware of it".

**The Hon. MATTHEW MASON-COX:** In your experience.

**Mr PATERSON:** These are not common features of my day or my experience and with a request for information, as I said, we have an officer who has responsibility for coordinating our responses to these activities. So any request of that nature either has already gone to that officer and I get the request after the action has started or if it has come to me in an original form then I would refer the request across to that officer.

**The Hon. MATTHEW MASON-COX:** Is that Mr Ron Taylor in this case?

**Mr PATERSON:** Yes.

**The Hon. MATTHEW MASON-COX:** What is Mr Ron Taylor's title?

**Mr PATERSON:** I will provide that on notice.

**The Hon. MATTHEW MASON-COX:** What sort of seniority does he hold in the department?

**Mr PATERSON:** I am happy to provide detail of his classification if that is helpful.

**The Hon. MATTHEW MASON-COX:** In relation to responding to standing order 52 it would be helpful for the Committee to understand what sorts of searches are typically done and how you go about that, obviously with help from Mr Ron Taylor, but particularly the document request process and email requests and other information?

**Mr PATERSON:** Normally with the request being coordinated by him he would not undertake the examination. The examination would in normal circumstances be referred to the area that has the responsibility for whatever the issue might be within the department. They would respond by examining the systems and the document record management systems and the email records and the like that would operate in a particular area. We have as part of the examination of these issues looked at our advice to staff on how they would respond to requests of this nature and we have issued an amending internal instruction on how officers should respond to these requests.

I am happy to examine that in light of the subsequent investigation that I suggested at the outset to determine whether there are any further amendments that need to be made to that process. But in combining a number of agencies and activities together, in some cases the dominant part of the original department had processes and procedures in place and in many cases they have been taken as the process that will apply in relation to the department. In other cases we have reviewed those and reissued them. We have done so in relation to the standing order 52 requests and I am happy to have another look at that and revise that if necessary after we have been through this investigation.

**The Hon. MATTHEW MASON-COX:** In your opening statement you said the department had seven days to respond, I suppose within the 14 days that are provided in relation to standing order 52, and you indicated that that really was not enough time to respond adequately.

**Mr PATERSON:** I am saying it was a short period of time and I cannot say to you whether that was the contributory factor, a contributory factor, the major contributory factor; I merely observed the fact that we had a lesser period of time there than subsequent requests that we had from ICAC to produce documents and the request that was made in 2009. The nature of that request may have influenced the nature of the search that was undertaken. Because we do not have hard documents files it is not as if someone has gone to a paper record and determined that it would produce some parts of that paper record and not other parts of it. The majority of documents that are held by organisations like mine are held electronically, so you then search based on the terms of the request to try to identify documents. What I have not gone back to is to work out what is the precise word search that was undertaken at the time to produce the documents that were produced in 2009.

**The Hon. MATTHEW MASON-COX:** That would certainly be very important to the Committee to understand how that process works.

**The Hon. AMANDA FAZIO:** I have a couple of questions. Given the failure to comply with the 2009 Mount Penny order, are you now confident that staff within the Department of Trade and Investment are aware of their responsibilities in respect of standing order 52 call for papers?

**Mr PATERSON:** I do not know that I would characterise the first—clearly we did not produce documents that were subsequently discovered by a number of other processes. That is clear. Whether that was a failure on our part to respond to the original request or a deficiency in our process or a deficiency in the search terms that might have been used to try to identify those documents, we are looking at events where many more of the apparent facts are now known, whereas in 2009, I would assert, less of those facts were known at the time. We are dealing with the benefit of hindsight and looking back in time at events where at the time that a request is made you are dealing with all of the ambiguity of trying to respond to a request for information when the people who are being asked for the information may know nothing about it.

**The Hon. AMANDA FAZIO:** If we put 2009 aside, are you confident now that your staff are aware of their responsibilities in respect of Standing Order 52 requests?

**Mr PATERSON:** I am confident that those who would be called upon to respond to a request now are aware of them. Am I confident that every person in the place is aware of the obligations in relation to a Standing Order 52 request? I would probably answer in the negative. But I am confident that the people who would be called on to prepare the documents to respond to a Standing Order 52 are aware of their obligations and are aware of the process that we have put in place.

**The Hon. AMANDA FAZIO:** Can you provide the Committee with a copy of your departmental procedures and guidelines for dealing with Standing Order 52 requests?

**Mr PATERSON:** I am happy to.

**The Hon. JEREMY BUCKINGHAM:** I will return to the 2011 report. When I said you, it was a collective you. I meant the department. You cannot recall whether you have read the Clayton Utz document?

**Mr PATERSON:** I have already indicated that.

**The Hon. JEREMY BUCKINGHAM:** So you certainly cannot remember the recommendations?

**Mr PATERSON:** I would not be able to recite them to you, no. I do not have the document before me. I have not read it in preparation for today.

**The Hon. JEREMY BUCKINGHAM:** The department commissioned the report.

**Mr PATERSON:** I have already indicated that I will ascertain who commissioned the report.

**The Hon. JEREMY BUCKINGHAM:** The document tells us that it was the department.

**Mr PATERSON:** It may do, but I have been asked. You are putting a proposition to me. I have already said on the record that I will ascertain who commissioned the work.

**The Hon. JEREMY BUCKINGHAM:** Fair enough. It also says that the department provided the documentation. It says:

In response to our request to the Department to be provided with all relevant documentation relating to the Mount Penny EL, William Hughes, Director, Industry Coordination, provided us with a number of hard copy documents ...

That seems to be a different process than you have outlined for the section 22. Why is there a different process for the section 22 when you compare that with this Clayton Utz report?

**Mr PATERSON:** I am happy to take that on notice.

**The Hon. JEREMY BUCKINGHAM:** Section 5 of the report goes on to suggest a whole page of further investigations that the department may want to undertake. Have any of those investigations been undertaken?

**Mr PATERSON:** I am happy to take that on notice.

**The Hon. JEREMY BUCKINGHAM:** In terms of your response to the Committee so far, are you suggesting that the process of review will include a comprehensive document search, or will the review then guide a further document search?

**Mr PATERSON:** No, the proposed terms of reference for the review were that they document the policies and procedures that applied to the order at the time so that the Committee is aware of what were the processes that were being applied by the department at the time the order was made. They were also to investigate and document the actions taken by the department in response to the order so that we look at what we did, who did what and how it was done. In relation to the documents that were not produced, they were to examine and report on where and how they were held. It was to look at the documents that were not produced at the time to ascertain why they were not produced at the time, where they were subsequently discovered and why they were not then produced by the Standing Order 52. That was our intention in relation to it.

**The Hon. JEREMY BUCKINGHAM:** Then there would be a subsequent document search as well?

**Mr PATERSON:** When you say subsequent, it seems to me that there would need to be a search of the documents that we have held to ascertain from where they were identified. The fact that there are documents that have been produced either in the section 22 or discovered by Independent Commission Against Corruption [ICAC], it is a question of identifying where those documents are located. They may well have been documents that were located by taking somebody's email record. They may be documents that were held in HP TRIM. They may be documents where it is possible that we searched one TRIM system and not another TRIM system inside the department. I cannot answer that question. But I had hoped in terms of the terms of reference that we put forward that we would be able to ascertain in detail precisely what had happened in relation to the steps. I do not think that the ICAC inquiry has looked at the procedural steps that we went through at the time.

**CHAIR:** That is not within their remit.

**Mr PATERSON:** And that is why I proposed to this Committee that we do that, so that we were able to satisfy the Committee that you understood what we did at the time to work out why documents were not produced at that point in time but have subsequently been discovered, and to work out why that had occurred.

**CHAIR:** How long would the review take?

**Mr PATERSON:** I had expected that would take weeks not months, but we have not commenced that review. Let me see if I have got something with me that specifically answers that question.

**CHAIR:** While you look, you would understand that the consideration by this Committee as to whether we are in favour of that approach probably depends upon time frames, amongst other things.

**The Hon. JEREMY BUCKINGHAM:** Further to that, is your proposition to have a review and then to have that review reviewed by an external law firm?

**Mr PATERSON:** No. It was my intention to have that review undertaken by an external law firm.

**The Hon. JOHN AJAKA:** From the start?

**Mr PATERSON:** From the start. That is why I intentionally did not do it internally and that is why possibly I have not got answers to some of the questions that you are putting to me today, because I consciously did not go there. I consciously wanted to make sure that they were able to undertake the examination uncluttered or unfettered by any prior examination that I may have undertaken. What I have tried to do is to make sure that they get to look at this cleanly so that they see it without there having been some intervening process.

**CHAIR:** You have explained that a couple of times. How long would the review take, if you have got something there?

**Mr PATERSON:** I am trying to respond to the questions and look at the same time. If I made a different judgement call about my colleague attending with me then I would have been able to answer your question. I may well have been able to turn to that officer and ask her.

**CHAIR:** Do you want to take it on notice?

**Mr PATERSON:** I will take it on notice.

**CHAIR:** Will the report and associated findings from such a review be made public and made available to the Committee?

**Mr PATERSON:** I am happy to commit to making them available to the Committee and—

**CHAIR:** And we will take it from there?

**Mr PATERSON:** Yes. Whether they are made public is a matter for consideration at the time. But we would be doing it for the purposes of preparing our formal submission to the Committee, which was my intention, so that we submitted that independent report to the Committee and that formed part of the submission that we then presented to the Committee. It is not to be done and then say that we are not going to give it to you. It was our intention to say that we want to undertake this independently and then we will provide the detail of that and that will inform the nature of the submission that we make.

**CHAIR:** Would any witness statements that are obtained for the purposes of the preparation of the report be made available to the Committee?

**Mr PATERSON:** I will take that on notice.

**CHAIR:** What is your expectation of the impact of such a review on this inquiry by the Privileges Committee? In other words, is it your expectation that the Committee needs to await the finding of the review before proceeding further?

**Mr PATERSON:** I do not think it needs to await the inquiry before proceeding further. I may want to come back to the point that I raised at the outset about some of the processes, but I would not seek to constrain the Committee. What we are trying to do is to be helpful to the Committee; not to tie your hands and say that until we can give you this information you cannot take it any further. I am not putting that to you. But I think that the review would be most helpful and hopefully more enlightening than you may think some of the answers that I have given you today have been.

**The Hon. GREG DONNELLY:** In an earlier part of your evidence this afternoon when asked a question about when you became alive and alert to the matter of the ICAC section 22 request for papers you indicated that you spoke to your chief legal officer. Can you tell the Committee who that person is?

**Mr PATERSON:** Tim Holden.

**The Hon. GREG DONNELLY:** With respect to some further evidence about Standing Order 52 requests that you have been associated with since you have been director general, you indicated that in some instances Mr Taylor dealt with them or was informed about them before you became aware of them. Is that correct?

**Mr PATERSON:** Yes. I said that he may become aware of those requests, because I said he coordinated the public requests for information including requests made under the Government Information (Public Access) Act. So there are times when he would be aware of the request before I was aware of the request.

**The Hon. GREG DONNELLY:** What is the time line or the trip-wire for him to inform you that he has received a request? Is there a specific time line that he is obliged to meet to inform you about whether a request has been made?

**Mr PATERSON:** Not that I am conscious of.

**The Hon. GREG DONNELLY:** Are we to take it that he would inform you when he thought it was appropriate?

**Mr PATERSON:** I think that you can be assured that he would inform me at the earliest opportunity.

**The Hon. GREG DONNELLY:** That is the understanding you have with him?

**Mr PATERSON:** That is the understanding that the organisation has; that we respond and that I would be made aware. As I said, there are quite literally tens of thousands of documents that come through the place. Am I aware of every document that comes in that might be addressed to me? Not in the first instance.

**The Hon. GREG DONNELLY:** That was not my question, and you know that to be the case.

**Mr PATERSON:** But what I am saying is that people are aware that they need to make sure that I become aware of those things that I have to know about and they are aware that I have to become aware of them at the earliest opportunity. But there will be times—whether I am committed to other things, whether I am out of the country—that I will not know at first pass that something has arrived in my name.

**The Hon. GREG DONNELLY:** You appreciate that we are examining this issue in some detail, which includes reflecting on some recommendations to perhaps improve the process across government, so this is not specifically directed at you. My question is do you believe that there should be a requirement for director generals to be informed within a particular time frame about a Standing Order 52 request by the House?

**Mr PATERSON:** No, I do not.

**The Hon. GREG DONNELLY:** You do not think they should be informed?

**Mr PATERSON:** I do not think that you need to set a time frame for them to be informed of that. You set a time frame for return of papers and I am obligated to sign off on that document. There is invariably a

relatively short period of time between the call for papers and when they are required to be filed. Do you need to document another time line process for agencies in the middle of that? I do not think so. That is my view.

**The Hon. GREG DONNELLY:** You are saying that you believe that the way it is structured at the moment works reasonably well.

**Mr PATERSON:** Obviously we have a situation where you would reasonably feel that it has not worked all that well because there are documents that have not been discovered as part of that process.

**CHAIR:** It is more than that. It is documents that it is becoming pretty plain were profoundly important to demonstrating malfeasance in regard to the issue of exploration licenses. It is a matter of profound importance to members of the previous Government and I would think to the current Government with regard to that. This is not a mere technical matter of missing documents.

**Mr PATERSON:** I understand that. I do not take it lightly in any way, shape or form. I did not propose that we undertake a detailed examination of all that we did because we were taking it lightly or thought that there were not issues of substance. We have been extremely cautious—and I have taken this decision—of not doing anything inside the place that could in any way, shape or form be seen to be undermining or interfering with the inquisitive process the Independent Commission Against Corruption was undertaking. I have intentionally not re-examined issues raised part way through.

I have no doubt that counsel assisting the commissioner have a process that they are following and a sequence of events that they are following and it is a matter for them to determine that sequence. I have not sought to try to go back to examine something, to start a question or to undertake a review where they may already have the answer to that question. If I did, I might be seen to be acting in a way that was interfering with the processes that they are undertaking. As I said, I have dealt with Independent Commission Against Corruption correspondence every week, or close to every week, in the time that I have been there. The requests for information have been extraordinary.

**CHAIR:** I would love to know.

**The Hon. GREG DONNELLY:** You referred to a document in your folder. As I understood your comments, it is a document that you have developed or that has been developed in the department that enhances or provides some clarity about how responses are to be made to Standing Order 52 requests. Is that correct?

**Mr PATERSON:** I indicated that we had done so. I was looking for it in the folder that I have before me. I have already indicated that I would be happy to produce that document for the Committee. If I can turn it up while we are dealing with this interchange, I will do so. If I do not have it with me, I will provide it.

**The Hon. GREG DONNELLY:** That is fine. Is that document specifically for your department or is it across the departments?

**Mr PATERSON:** It is for my department.

**The Hon. GREG DONNELLY:** Just your department?

**Mr PATERSON:** Yes.

**The Hon. GREG DONNELLY:** Are you aware that documents like that have been developed by other departments?

**Mr PATERSON:** I would presume so.

**The Hon. GREG DONNELLY:** Have you ever discussed with a chief of staff or other ministerial staffers whether certain documents should or should not be included in any response to any Standing Order 52 requests with which you have been associated?

**Mr PATERSON:** No, I have not.

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**The Hon. JENNIFER GARDINER:** In answer to a question from the Hon. Amanda Fazio you undertook to provide on notice a copy of the your department's processes in relation to responding to Standing Order 52 requests. Have they changed at all since you have been the director general? If so, can we have a before and after version?

**Mr PATERSON:** Yes, they have changed and yes you can have a before and after version.

**The Hon. JENNIFER GARDINER:** Have they changed substantially?

**Mr PATERSON:** Not substantially; they have been refined to make them clearer.

**The Hon. JENNIFER GARDINER:** Have you put your senior officers through a training process to alert them to the changes?

**Mr PATERSON:** I have written to all of them.

**The Hon. JENNIFER GARDINER:** Can we get the documents so that we can clearly see the before and after?

**The Hon. JOHN AJAKA:** Basically, can we have a tracked version of the before and after so we are not trying to compare word for word? That would be most helpful.

**Mr PATERSON:** If we have got one that remains on the system that has tracked changes in it, I am happy to produce it for you.

**The Hon. JOHN AJAKA:** I appreciate that.

**The Hon. JENNIFER GARDINER:** Thank you.

**Mr PATERSON:** Could I just clarify in response to a question that Mr Buckingham raised earlier, on the comprehensive document search being undertaken, one of the things that I put in the letter that I sent to the Chairman was that the outcomes of the independent review will be used to ensure that a comprehensive document search is undertaken, so I was confirming up front that we would be doing a comprehensive document search.

**The Hon. JEREMY BUCKINGHAM:** That is what I was clarifying, as part of it.

**Mr PATERSON:** So as part of the inquiry, not that we would go off and do that after the event, that we would examine all of the processes, and we say in the letter that I sent that we recognise the importance of ensuring the review does not in any way impede your inquiry and accordingly confirm the review and subsequent document search will not commence until after I have appeared before the inquiry and have received any comments from the Committee regarding the conduct of the review.

**CHAIR:** Mr Paterson, there has been a suggestion in some submissions that part of the problem of the Mount Penny return to order was caused by a lack of effective handover during a ministerial reshuffle, which occurred during the time the order was to be responded to. What guidelines do you have as a director general in regards to the preservation of documents by an outgoing ministerial office?

**Mr PATERSON:** I will take that on notice, Chairman. I can confirm that it is quite clear it is a matter of record that there were changes in Ministers during the period that this call for papers took place.

**CHAIR:** Very clear.

**Mr PATERSON:** That is a matter of record and there were subsequent changes after the period.

**CHAIR:** I might come back to that in a second. Can I suggest that the documents that you produced on 13 February—and I tell you it was 13 February—were principally emailed documents that were identified from the email accounts of various departmental staff and, therefore, not Ministerial staff documents.

**Mr PATERSON:** The question for me, Chairman—I do not know the answer to the question, but a live question that the review would have to examine is whether the search that was undertaken was a search of our TRIM records and not of all email records. It may well be that the reason that we subsequently produced documents that came from email accounts that were not produced in the first instance is if they went looking for documents in the document record management system, they may well have only have produced documents, and because of an interpretation that may have applied at the time that that documents request did not include emails and, therefore, they did not search emails. I do not know the answer to that question. I suspect I may be closer—

**CHAIR:** That would be a matter of serious concern if that were the reasoning process that were applied.

**Mr PATERSON:** It may well have been. I do not know, and I intentionally have not asked, but there has to be an explanation. There has to be a reason that documents were not produced.

**CHAIR:** That is right.

**The Hon. JEREMY BUCKINGHAM:** An email is a document, though.

**Mr PATERSON:** It depends on the interpretation that people apply. I am not saying that is the case. I am just saying—

**CHAIR:** You would understand, Mr Paterson, if that interpretation were adopted then what that interpretation did was to exclude vital documents for inspection by the Legislative Council, particularly vital documents in the May, June and July period of 2008. That is the documents that showed the genesis by which Mount Penny became the subject of an exploration licence and certain conclusions would be capable of being drawn from there by the deliberate exclusion of those documents. It would be a most serious matter, Mr Paterson.

**Mr PATERSON:** As I said, Mr Chairman, I do not know. That is hopefully what the inquiry that I proposed to the Committee would examine, but it is clear that the motion that was agreed to by the Legislative Council was that all documents be produced. I cannot know without looking at it, but if people took a narrow interpretation at the time of the word "documents" then you would get a very different response to a wide interpretation of the word "documents".

**CHAIR:** It would be interesting. I ask you this further question: Are documents that have previously been sent to State Records by the department provided in a return to order and, if not, why not?

**Mr PATERSON:** I will take that on notice.

**The Hon. JEREMY BUCKINGHAM:** Part of the issue that we are investigating is missing documents. A lot of those are emails. What is concerning is that we have not received those either from the department or the Minister's office. There are a number of reasons; that is what we are investigating. The question I have is, some of the documents that have been revealed at the Independent Commission Against Corruption inquiry have come from the department and not from a ministerial office, even though they are exchanges between ministerial staff and the department. Is there any discussion or crosschecking of correspondence between a department and a ministerial office? In actual fact, should there be to make sure that all the documents are sent? So if the department is sending a document off, the Minister's office is informed: this

correspondence came from you; we are responding. Some of the calls for papers I have seen have duplicates and they have the email from the department and the email from the office.

**CHAIR:** The addressee and the addressor.

**The Hon. JEREMY BUCKINGHAM:** That is exactly right, so you have the exchange from both sides. Do you think that should occur when it comes to Standing Order 52s?

**Mr PATERSON:** It depends on the nature of the request that is put before the agency. There is no doubt that the request that we are talking about spoke of documents held by the Premier, the Department of Premier and Cabinet, the Minister for Mineral Resources, and the Minister for Primary Industries, the Department of Industry and Investment, the Treasurer, New South Wales Treasury, so it asks for documents held by Ministers and documents held by the department. If it was differently worded, it may well have a different answer, but it certainly asked for documents that were held by both of those. We cannot search documents held by the Minister. Because they do not sit on our systems, we have no capacity to search that. That is why these things are coordinated by the Department of Premier and Cabinet. Whether an adequate search or otherwise was undertaken of the Minister's records at the time is not something that I can answer. You cannot ask us to search a system that we do not have access to. We do not provide the email or TRIM system—the TRIM system that operates for Ministers is different from the TRIM system that operates for the department. As I said, we have a number of TRIM systems.

**The Hon. MATTHEW MASON-COX:** Mr Paterson, this 4 November 2011 report from Clayton Utz is entitled "Preliminary Report". Is there a final report? If so, can we have a copy of that, please?

**Mr PATERSON:** I will take that on notice.

**CHAIR:** I suspect we might find that events elsewhere may have intervened.

**Mr PATERSON:** I think that is a reasonable conclusion, Mr Chairman. I cannot answer it emphatically.

**The Hon. MATTHEW MASON-COX:** You mentioned in your opening statement that you had identified a law firm that would potentially undertake the independent review process if that was seen to be something that was in accord with the Committee's request.

**Mr PATERSON:** Yes.

**The Hon. MATTHEW MASON-COX:** Is that firm Clayton Utz?

**Mr PATERSON:** No, it is not.

**The Hon. MATTHEW MASON-COX:** Will you perhaps give us the name of the firm that is going to do it?

**Mr PATERSON:** Maddocks.

**The Hon. MATTHEW MASON-COX:** And what the likely cost is?

**Mr PATERSON:** I cannot answer the question on the likely cost.

**The Hon. MATTHEW MASON-COX:** I think you were going to provide some terms of reference in that regard.

**Mr PATERSON:** And I was going to respond in relation to the—

**CHAIR:** I suspect it will be by way of time costing. The sky is the limit.

**Mr PATERSON:** The sky is really the limit on the expenditure of public money, Mr Chairman. The reason for testing the marketplace was to ascertain, and the officer who did not join me—

**CHAIR:** May have answered that question.

**Mr PATERSON:** —may have answered that question.

**CHAIR:** Maybe she will have an opportunity to come back later on.

**Mr PATERSON:** I did not know whether the Committee would take the questions. I had arranged for her to be here to follow-up on issues.

**CHAIR:** We have been very mindful of the—

**Mr PATERSON:** We make judgement calls. Without knowing where it would take us, she had not come here prepared as a witness, so I did not impose that upon her. I was merely going to have her in the hearing.

**CHAIR:** I am mindful that I suspect you have a 3 o'clock appointment.

**Mr PATERSON:** I am in your hands, Mr Chairman.

**CHAIR:** That is very kind of you. I think we will wrap it up at this point in time. We have a deliberative that we will hold after this to discuss certain matters that you have raised. Thank you for your evidence today. It has been productive. As previously indicated, the transcript of your evidence today will be confidential. However, after reviewing the transcript, the Committee may decide at a later date to make some or all of that evidence public.\*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**CHAIR:** That is it. I suspect, no doubt, we will be speaking again. Before you go, Mr Paterson, we will make a decision whether we accept your invitation to undertake the review. The one issue that will be a significant factor is the length of time that is involved, so I do not think—

**Mr PATERSON:** While you are having your deliberative process, I will step outside and make a phone call to get a firm answer on that question and come back and let you know.

**CHAIR:** That would be great.

**(The witness withdrew)**

**(The Committee adjourned)**