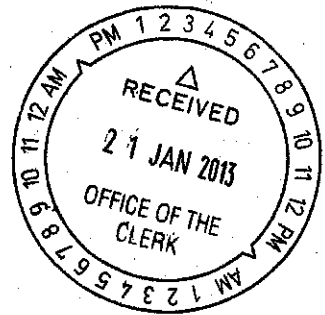




Premier & Cabinet



2013-12705

DV3/009-
C11/152

Mr David Blunt
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

18 JAN 2013

Dear Mr Blunt

I refer to your letter dated 10 December 2012 concerning a resolution of the Legislative Council under Standing Order 52 on 12 November 2009 concerning Exploration Licence - Mount Penny (the 2009 Order).

I note that you have been requested by a Member of the Legislative Council to investigate whether or not all documents that should have been provided with the return to the 2009 Order were in fact provided.

You have asked for any information or advice I can provide.

The Department of Premier and Cabinet (DPC) co-ordinates the return of documents in response to orders under Standing Order 52. In accordance with the principles of responsible government and Ministerial responsibility to Parliament, however, responsibility for producing the documents to the House formally rests with those Ministers who represent the Government in the Legislative Council.

The administrative process by which the Executive Government responds to an order under Standing Order 52 is set out in a memorandum that DPC sends to the agencies named in the relevant order on each occasion when such an order is made. By way of example, I have enclosed a copy of the DPC memorandum that was sent to the Department of Industry and Investment in respect of the 2009 Order.

In respect of documents that are being provided by other agencies (whether they be other departments, ministers' offices, or other agencies), DPC does not independently review the documents being produced. Instead, each agency is responsible for ensuring that the documents it is producing are fully responsive to the order, and it is required to provide a separate index of those documents.

Although not required by Standing Order 52, DPC also requests each agency to provide a certification that, to the best of its knowledge, all documents held by that agency and covered by the terms of the order have been produced. This certification does not extend to Cabinet documents as these are not covered by the terms of any order under Standing Order 52.

The purpose of the certification is to give assurance to the relevant Ministers that they are meeting their responsibility under Standing Order 52. Copies of the certifications are typically also included in the return to the relevant order that is provided to Parliament as most orders include a provision requiring that any document which refers or relates to the production of documents under the order must also be produced.

I am advised that the process that applies now when the Government responds to orders under Standing Order 52, as outlined above, is substantially the same as that which applied in 2009.

I note that the Member who has requested your investigation of this matter has suggested that any documents that should have been, but were not, provided with the return to the 2009 Order should now be provided to the Legislative Council. I am advised, however, that with the expiry of the previous Parliament and the formation of the new Government, the 2009 Order cannot have any continuing effect.

The allegation that documents may have been withheld from production under Standing Order 52 is a serious one, particularly in the context of the current investigations by the Independent Commission Against Corruption (ICAC).

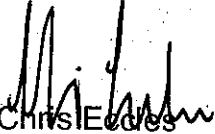
Given that the allegation appears to touch directly upon matters that are currently before the ICAC, upon receiving your correspondence DPC immediately forwarded it and the enclosed letter from the Hon. Mr Buckingham MLC to the ICAC.

It is a matter for the Legislative Council to determine what, if any, action it might wish to pursue in the event that its Members have any concerns regarding compliance with the Standing Orders.

If, however, the Council proposes to consider any action prior to the completion of the current ICAC investigations, it may be appropriate to seek the advice of the ICAC first in order to ensure that any such action will not inappropriately traverse matters that are currently before the ICAC and potentially risk prejudicing those investigations.

I trust that this information is of assistance to you.

Yours sincerely


Chris Eccles
Director General

cc Commissioner, Independent Commission Against Corruption