



**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

**REPORT INTO THE INVESTIGATION OF AN ALLEGED
UNAUTHORISED RELEASE BY THE CORRUPTION AND CRIME
COMMISSION OF DRAFT REPORTS RELATING TO THE
HON JOHN BOWLER MLA**

S199(1)(a) Corruption and Crime Commission Act 2003 (WA)

2 November 2009

Background

Prior to April 2009, the Corruption and Crime Commission ('CCC') conducted investigations into suspected misconduct arising from interaction between public officers Hon Mr John Bowler MLA, Mr Simon Corrigan and Mr Timothy Walster, lobbyists Mr Brian Burke and Mr Julian Grill and other persons. This interaction took place in respect of matters involving Fortescue Metals Group Pty Ltd ('FMG') and Precious Metals Australia Pty Ltd ('PMA').

The investigations conducted by the CCC resulted in the preparation of two draft reports under s84 of the *Corruption and Crime Commission Act 2003 (WA)* ('Act'). These reports have subsequently been described by the CCC as the 'FMG report' and the 'Yeelirrie report' respectively (the Yeelirrie report relates to the PMA investigation).

The CCC also referred aspects arising out of its investigations to the Director of Public Prosecutions ('DPP') and recommended that consideration be given to the taking of criminal proceedings against Mr Bowler.

The s86 process

As required by s86 of the Act, the CCC delivered, to each public officer and lobbyist named above, the extracts from one or both of its FMG and Yeelirrie reports relevant to that person. The details of this delivery are as follows:

1. On 16 April 2009, at the offices of the CCC, Mr Bowler was given extracts from each of the FMG report and the Yeelirrie report. These included the CCC's recommendations to the DPP, made in each of the two reports, for consideration to be given to the taking of criminal proceedings against him.
2. On 16 April 2009 extracts from the FMG report, not including the CCC's recommendation to the DPP concerning Mr Bowler, were hand-delivered to Mr Corrigan at his home address.

3. On 15 April 2009 extracts from the FMG report, not including the CCC's recommendation to the DPP concerning Mr Bowler, were hand-delivered to Mr Walster in Hay Street, Perth.
4. On 17 April 2009 extracts from each of the FMG report and the Yeelirrie report were hand-delivered to Mr Brian Burke at his home address. He received that part of the Yeelirrie report in which the CCC recommended to the DPP that criminal proceedings against Mr Bowler should be considered, but not that part of the FMG report that contained a similar recommendation.
5. On 16 April 2009 extracts from each of the FMG report and the Yeelirrie report were hand-delivered to Mr Julian Grill at his home address. He received that part of the Yeelirrie report in which the CCC recommended to the DPP that criminal proceedings against Mr Bowler should be considered, but not that part of the FMG report that contained a similar recommendation.

The Sunday Times Newspaper story and other media reporting

On 31 May 2009, the *Sunday Times* newspaper published an article titled *CCC leak exposed: Possible corruption charges against MP Bowler*. The journalists identified as the authors of this article were Mr Joe Spagnolo and Mr Glenn Cordingley. The article, in effect, described the FMG and Yeelirrie reports as having been 'leaked'. It mentioned the CCC's recommendations to the DPP, made in each of the reports, that he consider the commencement of criminal proceedings against Mr Bowler.

The article explained how the *Sunday Times* came into possession of copies of the draft reports, as follows:

The *Sunday Times* received the documents this week. Our source, who first received the documents, was bewildered as to why they had been sent, and how such confidential information had been leaked in the first place.

The person was shocked to receive the draft reports and had decided to pass them to the *Sunday Times* to expose the leak and hopefully prevent further security breaches.

The article added that the CCC had told the *Sunday Times* that a number of people inside and outside the CCC had access to its draft reports.

On 1 June 2009, the *West Australian* newspaper published an article titled *Grill says draft leak 'unfair' to Bowler*. In it, Mr Julian Grill was quoted as saying:

It [the leak] does point to some breakdown in security. I think it is quite unfair... I just want to say I think it does point to some serious breaches of security which should be investigated.

On the same day, the *Kalgoorlie Miner* newspaper published an article titled *Bewildered by leak: Bowler*. In this article, Mr Bowler was quoted as saying:

If we find someone from the CCC leaked the report then I will be disgusted and dismayed.

On 8 June 2009, the *Kalgoorlie Miner* published a letter written by Mr Graeme Campbell titled *CCC acted to save itself embarrassment*. In his letter, Mr Campbell wrote that the CCC was most likely responsible for the leak of the draft reports. He wrote:

...

It is true there were a limited number of copies in the hands of other people. But only the CCC had the ability, opportunity and motive for the leak, just as they did with the recent inquiry into finance brokers.

...

I believe the CCC knows that any case they bring against Mr Bowler will fail. This would be very embarrassing considering the enormous cost and harassment they have subject him to.

Their best option is to leak the documents alleging corruption, and then decide not to prosecute on the grounds the leak may pervert the cause of justice.

This would still leave Mr Bowler damaged by innuendo and the obvious belief within the CCC that if you throw enough mud some of it will stick.

...

The CCC's preliminary internal investigation

The Commissioner of the CCC directed his Principal Research Officer, Ms Jessica Wilby, to conduct a preliminary investigation into the issues raised in the various media reports. Ms Wilby reported to the Commissioner by internal memorandum dated 17 June 2009. The most pertinent points in Ms Wilby's memorandum, and in a subsequent memorandum dated 17 September 2009, are as follows:

1. The Commissioner signed the s86 notifications to all affected persons on 9 April 2009, shortly prior to taking leave for the period 14 April 2009 to 1 May 2009.
2. On Saturday 30 May 2009, the Commissioner was contacted by Mr Spagnolo of the *Sunday Times*. Mr Spagnolo said that he was in possession of, or had seen, a copy of each of the FMG report and Yeelirrie report. He referred to 'damaging material' about Mr Bowler, including the CCC's recommendations to the DPP.
3. On Saturday 30 May 2009, Mr Bowler telephoned Mr Barry O'Connor, Manager of Investigations of the CCC. He told Mr O'Connor that he had received a telephone call from the *Sunday Times*. He said that the *Sunday Times*

had told him that it had copies of the draft reports relating to him, that it was aware of the recommendations for criminal charges made in each of them and that it was going to publish them in the next edition of the newspaper. Mr Bowler said that the leak had not come from him or his legal representative and that it must therefore have come from the CCC. He asked the CCC to apply for an injunction against the *Sunday Times* preventing publication of the article.

4. On Saturday 30 May 2009, Mr Nick Anticich, Director of Operations of the CCC, spoke by telephone to Mr Bowler, and to Mr Bowler's solicitor, about the security of the CCC's s86 materials. Mr Bowler said the leak had not come from him or his lawyers and therefore must have originated from the CCC. Mr Bowler's legal representative was emphatic that the documents received by the *Sunday Times* had not come from his office.
5. Mr Bowler was the only person who had received, in the course of the s86 process, extracts from both draft reports containing the CCC's recommendations to the DPP in respect of him.
6. Mr Burke and Mr Grill received extracts from the draft FMG and Yeelirrie reports that were relevant to them, including extracts from the Yeelirrie report containing the CCC's recommendation to the DPP in respect of Mr Bowler. They did not receive an extract from the FMG report containing the CCC's recommendation to the DPP in respect of Mr Bowler.
7. Messrs Corrigan and Walston received extracts from the FMG report that were relevant to them. These did not include recommendations concerning Mr Bowler.
8. CCC officers Ms Wilby, Ms Mia Powell, the personal assistant to the Commissioner, and the Commissioner were identified by an internal audit to have been the only people who had physical access to the completed draft reports before the relevant extracts were given to their recipients.
9. In Ms Wilby's opinion, it was 'possible that Mr Bowler, Mr Grill and Mr Burke, or individuals connected with them, could all potentially possess motivation to leak the material to the press in order to heed [sic] the progression of the parliamentary reports and potentially taint the consideration of charges brought by the Commission in relation to the various lobbying matters'.
10. There had not been any unauthorised release of the materials from the CCC.

The CCC's notification to me under s196(4) of the Act

On 19 June 2009, the Commissioner referred this matter to me under s196(4) of the Act, so that I could decide under s196(5) whether or not I should remove it to my office for investigation.

On 7 July 2009, after some preliminary investigations, I formally removed the matter to my office for investigation under s196(5) of the Act.

Mr Bowler's complaint to me about the leaked draft reports

Prior to my formal removal of the matter for investigation, I had received a complaint dated 25 June 2009 about the leaked draft reports from Mr Bowler's solicitor. In subsequent correspondence and telephone conversations with my office, Mr Bowler's solicitor said that Mr Bowler had not released copies of the draft reports to any person, that Mr Bowler was extremely upset by the publicity concerning the draft reports and that he wanted me to investigate the source of the leak. After I removed the matter from the CCC under s196(5) of the Act, I informed the solicitor that Mr Bowler's complaint would be subsumed by my existing investigation.

My investigation under s195(1)(b) and s195(1)(c) of the Act

On 7 July 2009, I wrote to Mr Burke and Mr Grill (through their solicitors) and to Mr Corrigan and Mr Walston asking each of those persons to provide me with copies of all documents served upon them by the CCC in the course of the s86 process initiated by it in April 2009. I also asked each of them whether he had provided any of these documents, copies of them or relevant parts of them, to the *Sunday Times*, or to any other person.

All responded shortly thereafter. Each provided me with copies of the documents received from the CCC. The documents received by each were only those identified by Ms Wilby in her memorandum dated 17 June 2009, the salient points of which have been set out above. Each denied that he had provided any of these documents, or made known their contents, to the *Sunday Times*, or to any other person.

On 7 July 2009, I wrote to Mr Sam Weir, the Editor in Chief of the *Sunday Times*. I asked him whether the source from whom the copies of the draft reports had been received by the newspaper was prepared to speak to me. I also asked Mr Weir if he would provide me with a copy of the documents provided to his newspaper by its source. I reminded him that the source of the documents was described, in the article, as having been motivated by a desire 'to expose the leak and hopefully prevent further security breaches'.

On 21 August 2009, Mr Weir replied that the source did not 'want to be identified or interviewed'.

On 26 August 2009, I again wrote to Mr Weir, as he had not responded to my request for copies of the documents received by the *Sunday Times* from its source. I repeated my request that he consider releasing the copies of the documents received from the source, or portions of them, or at least a description of them to assist my investigation, even if this was done in such a way as not to reveal the identity of the source.

On 16 September 2009, Mr Weir replied, saying that he regretted that the *Sunday Times* 'cannot assist' me in my investigation. He gave no reason for this.

I determined that the circumstances did not warrant an exercise of my powers to compel the *Sunday Times* to provide me with those documents, a process that (in the unlikely event that it succeeded) would very likely have resulted in the identification of the source. It seemed to me, amongst other considerations, that in this instance the public interest in preserving the confidentiality of newspaper sources outweighed that in identifying the source of the documents said to have been received by the *Sunday Times*. This was so because, on the available evidence, there was nothing to suggest that, if the CCC was the source of the leak, it had deliberately leaked the documents. Consequently, the available evidence raised no issue concerning the integrity of the CCC. Had the position been different, I would have given closer consideration to the exercise of my powers under s197(2)(a) and s197(3) of the Act (those available to me pursuant to the *Royal Commissions Act 1968 (WA)*).

On 7 July 2009, I wrote to Mr Graeme Campbell and asked him to clarify whether the content of his letter to the *Kalgoorlie Miner* on 8 June 2009 was merely an expression of his opinion or whether he had specific knowledge about the CCC's ability and opportunity to leak the information to which he referred. Mr Campbell replied on 14 July 2009. He confirmed that he had no specific knowledge and that his letter had merely expressed his opinion.

On 3 August 2009, I wrote to Mr Bowler's solicitor asking what had been done by Mr Bowler with the draft reports received by him from the CCC and how those documents had been handled by the solicitor. Shortly afterwards, he responded with the following information:

1. Mr Bowler delivered all documents received from the CCC to his solicitor. He did not, at any time, show those documents to any other person before providing them to his solicitor.
2. The documents were photocopied once. The photocopies were given to Mr Bowler. The original documents remained on the legal practitioner's file. The file is kept in a safe in the practitioner's office.
3. Mr Bowler subsequently returned his copy of the Yeelirrie report to his legal practitioner, with notations made by him. He kept his copy of the FMG report in his electoral office which is secured by a monitored security system. No member of his staff knew where he kept it.

On 8 and 15 September 2009, I wrote to the Commissioner. I made enquiries concerning the procedures adopted by the CCC in producing and handling the documents that were delivered to the affected persons under s86 of the Act. I also asked him whether he, or any officer involved in the s86 process, provided any part of the draft reports to any person outside that process.

In my letter of 15 September 2009, I informed the Commissioner that my investigation, to that point, presented me generally with three possible explanations. The first was

that, notwithstanding his denial, Mr Bowler released copies of the FMG and Yeelirre reports, or the relevant extracts from them, directly to the *Sunday Times*, or to another person who made them available to the newspaper. The second was that an officer of the CCC accidentally released copies of the reports to one of the people affected by the s86 process or to another person, and that person made them available to the *Sunday Times*. The third was that an officer of the CCC, acting without authorisation, released copies of the FMG and Yeelirre draft reports, or the relevant extracts from them, directly to the *Sunday Times*, or to another person who made them available to the *Sunday Times*.

The Commissioner responded on 21 September 2009. He provided a comprehensive description of the procedures that were adopted by the CCC in writing the draft reports and of the extensive security measures involved in maintaining them (including the results of an audit of access to those reports which showed that no officer outside the s86 process had had access to them) by way of internal memorandum written by Ms Wilby on 17 September 2009 to the Commissioner. She described the process of the relevant portions of the draft reports having been printed directly from a CCC computer. Each full page of these extracts had printed on them (diagonally across the page) a security watermark.

This watermark consisted of the words '9/4/09 Protected Draft' and was placed electronically on the documents prior to them being printed. Ms Wilby also described the personal delivery, by CCC officers, of the documents in secured envelopes to the people adversely affected by the draft reports. In essence, one copy of the relevant portions (as described above) for each person adversely affected by the s86 process was printed off the CCC computer, checked for its accuracy and sealed in an envelope after a covering letter from the Commissioner was attached.

The Commissioner expressed his satisfaction with those procedures. Further, the Commissioner and those officers involved in the s86 process each said that no part of the draft reports was given to any person outside that process.

Other enquiries subsequently made by me have shed no additional light on the matter.

Conclusion

My investigation establishes that, so far as can be ascertained, only the CCC and Mr Bowler had possession of both draft reports containing extracts in which the CCC recommended to the DPP that consideration should be given for criminal proceedings to be commenced against Mr Bowler.

There is no evidence available to contradict the responses to my questions given separately by Messrs Grill, Burke, Corrigan, Walster and Campbell.

The refusal by the *Sunday Times* to assist my investigation prevents me from verifying which portions, if any, of the draft reports were possessed, or seen, by journalists at that newspaper. However, as the article accurately reported the making of recommendations concerning the giving of consideration to the prosecution of Mr Bowler, it seems to be

plain that the relevant content of the draft reports was communicated to them by someone in some form. Without knowing who that person was, or precisely what documents were in his or her possession, it is impossible for me to ascertain from where that person obtained the information.

There is no evidence available to contradict the responses to my questions given by Mr Bowler and his solicitor. Moreover, Mr Bowler asked the CCC to prevent the *Sunday Times* from publishing the article when he was informed by the newspaper that it was about to do so. He complained to me about its publication shortly afterwards. In the circumstances, there is no reason to think that he was the source, whether directly or indirectly, for the *Sunday Times* story.

Similarly, there is no evidence available to challenge the response to my questions given by the Commissioner. The audited procedures described by him in respect of the creation, maintenance and distribution of the draft reports in this matter and for the s86 process generally are appropriate for achieving procedural integrity for such a sensitive function. There is nothing, other than the fact that the relevant information found its way to the *Sunday Times*, to suggest that this procedure was not followed, or that its integrity was compromised, in this case. The fact that the information became public is equivocal, given that the CCC was not the only person or entity to have had possession of the relevant documents. There is no evidence to support the proposition that the materials were deliberately leaked by the CCC or that its integrity was otherwise compromised.

I am consequently unable to identify the source of the information provided to the *Sunday Times*. Nor am I able to say how the source came to be in possession of the materials that were apparently provided to the *Sunday Times*.

Therefore, in respect of my functions under s195(1)(b),(c) and (e) of the Act, I hereby report that my investigation:

1. does not disclose evidence of misconduct on the part of the CCC or any officer of the CCC, and
2. establishes that the procedures adopted by the CCC in carrying out its function under s86 of the Act are (and were) appropriate.



CHRISTOPHER STEYTLER QC

**PARLIAMENTARY INSPECTOR OF THE
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