

Western Australia: Parliamentary Highlights January 2005 to July 2007

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The first 30 months of the 37th Parliament were some of the most controversial in the history of the Western Australian legislature. Less than a year after being elected for a second term, Premier Geoff Gallop resigned due to illness and was replaced by the factionally unaligned Alan Carpenter. One senior officer of the Legislative Council was accused of defrauding the Parliament, marking the beginning of a new era of accountability courtesy of the fledgling Corruption and Crime Commission (CCC). After a series of embarrassing revelations for the Carpenter Government in the period leading to June 2007, four Ministers departed the Cabinet and no less than three incumbent members and one former member were found to be in contempt of Parliament. This brief resume covers the matters which were particularly pertinent to the Western Australian Parliament in six month segments, which broadly coincide with the sitting patterns of the legislature.

January–June 2005

The first months of 2005 were dominated by the 26 February State general election, and despite polling poorly for most of its first administration the Labor Government, led by Geoff Gallop, was returned for a second four year term. Predictions that Colin Barnett's Liberal-National Party Coalition could win government were way off the mark as the election outcome was surprisingly similar to the 2001 poll, with Labor retaining the same number of Lower House members and an almost identical two-party preferred vote. In the Legislative Council, Labor and the Greens won 18 of the 34 seats, the same total as the previous Parliament, although Labor's 16 seats represented an increase of 3 at the expense of the Greens. On the same day two referendum questions on extended retail trading hours were placed before voters and decisively defeated, with 41.3 per cent in favour of the

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first question concerning extended weeknight trading and just 38.6 per cent voting in favour of eased restrictions on Sunday trading.

The re-election of the Labor Government was soon followed by the re-introduction and passage of its previous 'one vote one value' legislation. In a bitter blow in 2003, the government had introduced legislation that was declared invalid by both the WA Supreme Court and the High Court of Australia on the basis that a constitutional absolute majority of the Legislative Council had not been achieved. The WA Legislative Council operates on four year fixed terms which terminate on 21 May every four years and the return to Parliament in March 2005 provided a two month 'window of opportunity' for the government to steer its flagship 'one vote one value' legislation through the Council. This time, however, the government had the required constitutional absolute majority, providing it could secure the support of outgoing former Liberal turned Independent Alan Cadby.

The One Vote One Value Bill 2005, later renamed in the Legislative Council the Electoral Amendment and Repeal Bill 2005, was introduced in March. The original title was considered a misnomer because although the Bill apportioned election districts in the Legislative Assembly on the basis of the average district enrolment with a ten per cent variation, in at least two respects the one vote 'one value principle' was not strictly upheld. Firstly, the Legislative Council was to retain vote weighting with an unchanged equal ratio of metropolitan and country seats, despite over 70 per cent of electors residing in the metropolitan area. Secondly, in the Legislative Assembly a large district allowance was to apply to districts with an area of over 100,000 square kilometres by multiplying the area of the district by 1.5 per cent and adding this number to the actual number of enrolled voters. In addition, the Constitution and Electoral Amendment Bill 2005 was introduced to increase the number of seats in the Legislative Assembly from 57 to 59 and from 34 to 36 seats in the Legislative Council. The Labor government eventually celebrated the passage of the legislation with the Governor's assent of the Bills on 20 and 23 May 2005 respectively.

July–December 2005

In early August 2005, Laurie Marquet resigned as Clerk of the Legislative Council due to a serious illness, after 23 years tenure in what had been a remarkable career. Days later in a shock development, Marquet was charged by summons with over 50 corruption offences, including stealing more than \$227,000 in cash from the Parliament, attempting to pervert the course of justice and drug possession. The charges stemmed from an investigation by the CCC, which had received an allegation from an officer of the Legislative Council via the Auditor General Des Pearson. In a further shock, Moira Rayner, then Acting Commissioner of the CCC, resigned after telling Commissioner Kevin Hammond that she may have compromised herself during a visit to see Marquet at a Perth hospice. Although not directly involved in the investigation, Rayner had warned Marquet that his phone

was, in all probability, bugged. In a report to Parliament's Joint Standing Committee on the CCC, Parliamentary Commissioner Malcolm McCusker QC, found that Rayner's actions amounted to misconduct rather than constituting a criminal offence. Nevertheless Robert Cock, Director of Public Prosecutions, decided that in the public interest Rayner should stand trial. Rayner was later found not guilty of attempting to pervert the course of justice.

In the Legislative Assembly the operation of the *Members of Parliament (Financial Interests) Act 1992* and the Premier's Ministerial Code of Conduct were the focus of bitter debate. On 13 October 2005, Bob Kucera reluctantly resigned from the Gallop Ministry on the basis he had attended Cabinet meetings discussing a measure to save Alinta Gas and its partners some \$88 million, without declaring that his wife held Alinta shares. In a surprising twist, Opposition Leader Matt Birney, who had led the charge against Kucera, was soon under attack when it emerged that at around the time of the Kucera issue, he had surreptitiously amended his own records without notifying the Clerk of the Legislative Assembly, Peter McHugh. The Legislative Assembly referred the matter to its Procedure and Privileges Committee (PPC) which reported on 22 December 2005, contending that Birney's actions amounted to a contempt of the Legislative Assembly, foreshadowing robust debate when Parliament resumed in March 2006.

January–June 2006

The first six months of 2006 witnessed significant changes regarding the occupants of high public office in Western Australia. On 16 January, Premier Gallop announced his resignation and immediate departure from Parliament. The Premier's admission that he was suffering from clinical depression was received with surprise. Gallop had, maintained preferred Premier ratings over the five years and was broadly credited with a sound methodology in the formulation of policy. Within a few months of his resignation, the former Premier had accepted a university appointment in Sydney. Ultimately, as a man of sharp intellect, Geoff Gallop will be remembered for rebuilding the Western Australian Labor Party from the electoral ashes of the so called 'WA Inc' era. Part of this success was attributed to Gallop's ban on his Ministers dealing with the former Premier Brian Burke and his associate, the former Minister Julian Grill, in their capacity as lobbyists.

Alan Carpenter (49), a former ABC journalist, was quickly installed as the new Labor Premier. Carpenter was the unanimous choice of the Labor caucus and was considered the most capable of holding the electoral advantage that Gallop had established. Carpenter's 'honeymoon' phase did not last long as the reshuffle of the 17 member Cabinet was almost immediately beset by problems, arguably due to Carpenter's decision to relax the ban on contact with Brian Burke and Julian Grill. Firstly, long serving MLA Norm Marlborough, who had won a Ministry after years in the wilderness, was reported as describing Burke as 'a political genius', requiring Carpenter to deny that Burke was going to be able to exercise greater political

influence than had been possible under Gallop. Marlborough had only gained the Ministerial post with the departure of Geoff Gallop, who had refused to consider Marlborough's membership in the Cabinet due to his known links with Burke. At the same time the Liberal Party was wracked by internal dissension, particularly over Labor's revived contemplation of public election funding of political parties.

The Opposition Liberal Party faced major problems in the first half of 2006 after a 'nightmare' finish to 2005 when young leader Matt Birney was found in 'contempt of the Legislative Assembly'. When the Legislative Assembly resumed sitting in March, Birney's unreserved apology took the issue off the agenda. However, an attempt to reshape the Shadow Cabinet in early February helped foster discontent in the Party, resulting in a leadership change. On 24 March 2006 former Court government Minister Paul Omodei, who had in 2005 relinquished the Deputy leadership following court proceedings, narrowly defeated the incumbent in a divisive party room ballot (at 18–15, with the spill motion only 17–16) while Troy Buswell retained the deputy post. Buswell's role in the affair was contentious as his apparent support for Omodei contradicted an earlier indication that he would back Birney.

Carpenter soon faced a second media assault, with Opposition demands for the sacking of Police and Emergency Services Minister John D'Orazio. D'Orazio, also the Minister for Justice, had been engulfed in three scandals in as many months. Early in the year it had been publicised that the former pharmacist had failed to pay superannuation to some staff at his pharmacy. This was exposed days after the *West Australian Newspaper* revealed D'Orazio as the figure referred to as the so-called 'Godfather' at a CCC hearing in 2005 that focused on local government elections and dealings. Premier Carpenter initially demoted D'Orazio to the 'junior' portfolios of Disability Services, Citizenship and Multicultural Affairs and was criticised for the implied low priority given to these portfolios. Then, in early May, it was revealed D'Orazio had unwittingly lost his driver's license for unpaid fines and was subsequently involved in a minor traffic accident. Carpenter, who had once described D'Orazio as 'a rising star', accepted his offer to resign, allowing Parliamentary Secretary and long-time hopeful Tony McRae to fill the Cabinet vacancy.

Parliamentary history was made in March 2006 when Mia Betjeman (39) became the first woman to be appointed to the position of Clerk of the WA Legislative Council. As a lawyer with more than eight years of parliamentary experience, it was expected Betjeman could 'make a difference' in the role which included the prestigious title of 'Clerk of Parliaments'. The appointment followed the August 2005 resignation of former Clerk, Laurie Marquet, who was never well enough to appear in court and died in April 2006. However, Betjeman later resigned on 18 July 2007, citing private personal reasons after only 18 months in the job.

July–December 2006

Although the second half of 2006 saw the continuation of astonishing economic growth in Western Australia, as high as 14 per cent, accompanied by the nation's lowest unemployment rate of 3.1 per cent, opinion polls indicated that the Labor government had experienced a dent in its electoral support. Nevertheless, Carpenter maintained a high satisfaction rating and was discernibly the preferred Premier ahead of Liberal Leader Paul Omodei, whose ratings had marginally improved after a 'winter of discontent' in the party.

In late August and following his embarrassing resignation from Cabinet in May, former Minister John D'Orazio was forced to resign from the Labor Party altogether after the CCC uncovered evidence of his dealings with a Bayswater panel beater who had allegedly offered to 'help' the then Police Minister with a number of unpaid speeding fines. Premier Carpenter considered the actions represented 'serious misconduct' and 'appalling judgement'. D'Orazio, for his part, maintained his innocence and remained in the Parliament as the Independent Member for the seat of Ballajura.

Westpoll (12/12/2006) revealed a bad dip for Labor in November, which may be attributed to the early November publication of taped telephone conversations by the CCC. The tapes provided both sensational media copy and more than a few headaches for the Premier as one of his Cabinet chickens came home to roost in spectacular fashion. In October 2006 the CCC had started its hearings into allegations that Brian Burke had been the architect of a plan to funnel payments to seven Busselton council candidates. Developer Canal Rocks Pty Ltd, which was trying to secure approvals for a contentious \$330 million development at Smith's Beach near Yallingup in the State's south-west, had been reported as paying some \$43,000 to an action group, which in turn paid a number of candidates in the local government elections. Small Business Minister and Minister for the South-West Norm Marlborough emerged as a central figure in the CCC probe and the November hearings revealed that former Premier Burke had yielded such undue influence over Minister Marlborough that he was forced to resign from the Cabinet, the Parliament and the Labor Party. Burke, with business partner Julian Grill, had lobbied on behalf of proponent Canal Rocks. Questions were then raised as to the appropriateness of meetings Minister Marlborough had brokered between the proponent and the Department of Conservation and Land Management. Then, in a humiliating 90 minute session on 8 November 2006, it was revealed Marlborough was in possession of a mobile phone, purchased by Burke, for the sole purpose of secret conversations between the two long time friends. The CCC publicised covertly taped discussions between Marlborough and Burke, some of them taking place within the Legislative Assembly Chamber, in which Burke instructed the Minister on how to answer questions regarding their relationship.

January–July 2007

Before Parliament sat in 2007 Premier Alan Carpenter faced a by-electoral test in the seat of Peel on 3 February following the resignation of Minister Norm Marlborough. Labor pre-selected Paul Papalia, a former naval officer who had served in the Middle East and who had no previous link to the Labor Party. Despite the continuing scandals the ALP actually increased its 'two-party preferred vote to 64.59 per cent, a swing of some 1.00 per cent. This left the government with 31 seats in the 57 member Legislative Assembly, to which effectively could be added the vote of newly 'Independent' member John D'Orazio. The Electoral Commission was relieved with a turnout of nearly 80 per cent, well above the 2006 Victoria Park reading of 64 per cent twelve months earlier. The result was deemed as a disappointment for the Liberal Party and its Leader Paul Omodei, whose tenure as Opposition leader was widely speculated upon.

The first half of 2007 witnessed further serious revelations from the CCC as the fallout from their 2006 inquiry into the activities of the State's most prominent lobbyists continued to rock the Parliament. Two more Ministers in the Carpenter Government were dismissed from their positions in February following revelations at the CCC hearings of their dealings with lobbyists Burke and Grill. Much of the evidence related to information gained through covertly recorded conversations at the home of Julian Grill.

Newly appointed Minister for the Environment and Climate Change, Tony McRae, was called before the CCC to answer allegations that he had used his position as a minister to try and gain a financial benefit from Mr Grill. The CCC alleged that in his capacity as acting Planning Minister, Mr McRae asked Julian Grill for fund-raising help while saying he was considering a planning proposal lodged by one of Mr Grill's clients. Mr McRae vehemently denied he had done anything wrong and questioned the processes of the CCC, which he believed denied witnesses any form of procedural fairness. However, the actions of his colleague John Bowler soon saw him embroiled in yet another scandal uncovered by the CCC.

The Legislative Assembly's PPC undertook an inquiry into the unauthorised release of Committee documents and other matters in March 2007 following revelations by the CCC that John Bowler had leaked a confidential draft committee report to Julian Grill. In essence, John Bowler, who was in 2004 a member of the Legislative Assembly's Economics and Industry Standing Committee (EISC), forwarded a Chair's Draft Report to Julian Grill, who then forwarded it to a major stakeholder in the EISC inquiry. That stakeholder directly inserted amendments favourable to his company into the draft that were subsequently adopted into the Committee's final report. That company was at the time involved in a legal dispute with another company whose actions in closing down a mining operation were the subject of the 2004 inquiry. It was also alleged by the CCC that Julian Grill received considerable remuneration from the stakeholder, including a 'success fee' based on a favourable

outcome in the legal proceedings held in New South Wales. Further evidence showed that the same stakeholder who had received the draft report attended a fundraising dinner for the re-election campaign of Tony McRae, who was at that time the Chairman of the EISC, during the inquiry process.

John Bowler was 'sacked' by Premier Carpenter in February 2007 and asked to leave the ALP following the CCC revelations. Later in June Bowler was declared by the PPC to be in contempt of Parliament and was suspended, upon its recommendation, for six sitting weeks. It was also recommended that the former Chairman, Tony McRae, be given the opportunity to apologise to the House for his failure as Chairman of a Standing Committee to ensure that a key stakeholder in his Committee's inquiry did not attend his re-election campaign fundraising event as a paying participant. With respect to Julian Grill, a former parliamentarian, the PPC recommended he be found in contempt of Parliament, by reason of his actions of forwarding the leaked draft report. Grill, a former Minister, refused to capitulate to a demand that he quit the party, but was later expelled following a disclosure that he had contributed funds to a National Party candidate during the 2005 election campaign. The Legislative Assembly agreed that Grill should be summoned to the Bar of the House to apologise for his actions at the next sitting date, expected to be 14 August 2007.

Other developments coming out of the CCC hearings included a revelation that Shelley Archer MLC (partner of union heavyweight Kevin Reynolds) had leaked government documents to close ally Burke. Premier Carpenter described this action as 'reprehensible' but stopped short of demanding her resignation from the party. Labor's 'rising star' Ben Wyatt was dragged into the loop when it was revealed that Burke had issued invitations to a fund raising dinner before Wyatt's Victoria Park by-election victory in February 2006. Wyatt claimed he was unaware of either Burke or Grill promoting his fund raising activities.

The Liberal Party also experienced some pain as a consequence of the CCC hearings. On 22 February 2007 Opposition Leader Paul Omodei relieved Anthony Fels MLC of his shadow portfolio after the CCC revealed that former Liberal power broker Noel Crichton-Browne had drafted a parliamentary speech for Fels and a motion in support of demands for compensation for victims of the 2000 'mortgage brokers scandal'. Earlier it had been reported that Crichton-Browne had mobile telephone conversations with Deputy Liberal Leader Troy Buswell, particularly when the latter had been President of the Shire of Busselton. Crichton-Browne was at that time working with lobbyists Burke and Grill in support of the Canal Rocks development proposal. Ultimately, the CCC report into the Canal Rocks affair would be important to Buswell and possibly Fels.

Members of Parliament were not the only ones embroiled in the Burke and Grill affair. During a Budget Estimates hearing on 27 May 2007, Shadow Health Minister Kim Hames asked Health Minister Jim McGinty if there was any email correspondence between Mr Burke and any Health Department employee. After

seeking comment from the Director General of the Health Department and Chairman of the WA Football Commission Dr Neil Fong, McGinty answered in the negative. However, the Liberal Party was soon able to divulge that as a result of a Freedom of Information search, nine emails between Dr Fong and Mr Burke did indeed exist. Amidst claims that the Liberal Party was aware of further e-mails, McGinty immediately established an inquiry headed by barrister Ken Pettit SC but, following much criticism, this course of action was soon abandoned when the CCC revealed it would conduct its own inquiry into the matter. Meanwhile, on 5 June 2007 the CCC was headed by a new Commissioner Len Roberts-Smith replacing Kevin Hammond with a five year term.

One unusual parliamentary resignation was that of Liberal MLC Margaret Rowe, elected to represent the Agricultural Region in 2005. Rowe was declared in contempt of Parliament by President Nick Griffiths for having been absent from the House for a period longer than six sitting days. On 21 June Rowe provided a written apology and resigned her seat the next day due to 'ill health'. Meanwhile, in early June, Labor MLA Mick Murray pleaded guilty in the Margaret River Magistrates Court to breaching the State's fishing laws after being fined for taking abalone out of season. The Opposition argued that he be stripped of his role as parliamentary secretary for the South West. However, Magistrate Liz Langdon agreed to a spent conviction meaning that a criminal conviction was not recorded.

Almost 12 months after the CCC had cast doubt over John D'Orazio regarding his dealings with a panel beater, it was itself embarrassed when details of its report into the matter were leaked to the *West Australian* newspaper. The CCC had given both the Premier and Leader of the Opposition embargoed copies of the report a day before its expected release. The Chief of Staff in the Leader of the Opposition's office was stood down facing disciplinary processes under the *Public Sector Management Act 1994* when it emerged that he was responsible for the leak to the press. Prominent Labor backbencher and lawyer John Quigley lodged a formal complaint with the Parliamentary Inspector Malcolm McCusker, claiming the CCC's integrity had been impeached by the provision of advance copies to the Premier and Opposition Leader, while withholding the completed document from Mr D'Orazio and the Parliament. The leaked report contained an opinion on Mr D'Orazio's relationship with the panel beater, and found that although they did not represent misconduct, Mr D'Orazio's actions were 'highly inappropriate'. In his report, on 18 July 2007, McCusker criticised the CCC for its handling of the matter and recommended that it should cease the practise of releasing embargoed copies of its reports and further, that it should refrain from expressing an opinion on the conduct of any person, unless such conduct constitutes misconduct. Mr D'Orazio maintained his position that the actions of the CCC had done irreparable damage to his political career.

Another parliamentary casualty of the CCC hearings had been Federal Environment Minister, Ian Campbell. His fate was sealed in the context of an attempt to question the credentials of Kevin Rudd, as Federal Labor leader, for attending party funding

events associated with Burke and Grill. Campbell lost his Ministry on the basis that he had contacts with the disgraced lobbyists and was quickly replaced in the Howard Ministry by another Western Australian Senator David Johnston, who became the Minister for Justice and Customs from 9 March 2007. As a consequence WA Senator Chris Ellison was promoted to Cabinet. The Liberal Party nomination for the Senate vacancy was Belgian-born Mathias Cormann, a 36 year old who had worked in various positions for the government of Richard Court and as Liberal Party Vice President. Although Cormann's candidacy for the Senate had been criticised by veteran Senator Ross Lightfoot, the nomination was ratified by State Parliament on 19 June, with Lightfoot having made public his decision not to stand for the next Senate election expected later in 2007.

Somewhat overshadowed by the seemingly endless fallout of the CCC hearings, the Parliament passed no fewer than 137 Acts between 2005 and the mid-way point of 2007. Some of the most significant included the *Financial Management Act 2006* and the *Auditor General Act 2006*, both replacing the *Financial Administration and Audit Act 1985* as the cornerstones of the management of public sector finance. Also passed were the *Commissioner for Children and Young People Act 2005* and the *Daylight Saving Act 2006*, which, after an unusual legislative passage, marked the start of a contentious three-year trial of daylight saving for the state.

The Human Reproductive Technology Amendment Bill 2007 created somewhat of a stir as the Most Reverend Archbishop Hickey made comments that were construed as constituting a threat to Catholic members who voted in favour of the Bill. A report in the *West Australian Newspaper* dated 6 June 2007, indicated that the Archbishop would wait for the result of the expected conscience vote on the bill prior to considering whether Catholic Members should face excommunication or be excluded from taking Holy Communion. The Speaker of the Legislative Assembly, Hon Fred Riebeling, immediately referred the matter to the PPC, which agreed to write to the Archbishop outlining their concerns over the comments. A copy of that letter was tabled in the Legislative Assembly on 14 June 2007.

A few months earlier important legislation had been passed which introduced a proportional representation (PR) voting system for multi-member wards in the State's 144 local government authorities. For single member wards the preference (or alternative vote) was instituted. These new voting laws had followed the Legislative Council's Standing Committee on Environment and Public Affairs Report on the Local Government Amendment Bill 2006, in which the Liberal Party's resistance was made apparent. The laws replaced the use of plurality (or first past the post) which had been used since 1995. In addition, local government elections were now to be conducted biennially in October rather than May. Importantly, the PR formula was to be based on the Weighted Inclusive Gregory Method. This change had also been implemented for the scheduled 2009 Western Australian Legislative Council elections, which meant that the Upper House was no longer to employ the Inclusive Gregory Method of PR, used for Senate elections.

The shape of the Western Australian electoral map was expected to significantly change when the deliberations of the Electoral Commissioners were to be finalised following the passage of the One-Vote-One Value legislation. At a media conference on 29 June the proposed boundaries were published with the understanding that such boundaries were the main draft from which it was unlikely there would be substantial changes. As predicted there were now to be 42 (up from 34) metropolitan districts and 17 (down from 23) country districts in the Legislative Assembly. The final boundaries to be published on 29 October 2007 would be those for the expected election in early 2009. The legislation provided for a timetable for electoral re-distribution after the 2009 election and, unless there were further fundamental changes in the electoral law, it could be postulated that the expected 2011 redistribution would result in only minimal changes to the respective district and region boundaries.

Employing the 30 June 2007 'draft' boundaries election analyst Antony Green undertook an examination of the proposals on behalf of the Western Australian Parliamentary Library. According to Green the return for the Labor in 2009, based on its 2005 two-party preferred vote of 53.2 per cent, would be 38 seats against 21 for the combined 'forces of conservatism', which included two seats held by independents. It would require a uniform swing of over 4 per cent for Labor to lose its majority of nine notional seats. It needed to be recognised though, that such notional calculations in many cases required the estimates to include figures in which the respective political parties may not have previously fought determined campaigns in some districts, as they were not then regarded as marginal.

The new regional boundaries in the Legislative Council also provoked interest. There was a consensus that the relative position of the Labor Party may decline. Upon inspection of the proposals the National's Leader Brendon Grylls indicated to the media that they were planning a strong ticket for the Agricultural Region poll, which now had an even more pronounced agricultural land use base, giving the party the prospect of winning two quotas. For nearly two years Grylls had been articulating a 'balance of power' doctrine and it was even suggested that he, or another prominent National, may stand for the Council. Another factor which gave this strategy more credibility was that the Nationals appeared likely to achieve success in only two notional seats, down from the party's existing five seats. Grylls thought a probable 'balance of power' situation in the Upper House was a far better outcome for country constituents than having a few Lower House representatives who may be 'irrelevant'.

Unfortunately, the CCC revelations and the 'one vote one value' ramifications have tended to overshadow the important work of committees in both Chambers of the Parliament. In the Legislative Assembly an Education and Health Standing Committee report into the contentious Outcomes Based Education (OBE) was tabled in 2006 and a contentious report into lead levels at the Port of Esperance was due in August 2007. In the Legislative Council, two of the most important inquiries included a Select Committee of Privilege on a Matter Arising in the Standing

Committee on Estimates and Financial Operations, which was established as a result of the CCC investigations, and the Public Obstetric Services Select Committee, both expected to report before the end of 2007. With a campaign for the election to be conducted on significantly changed boundaries and more CCC hearings in the offing, West Australians can expect more surprises in the lead up to the early 2009 poll. ▲