

Tasmanian Parliamentary Chronicle

July 2006 – December 2007

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Two issues dominated the Tasmanian Parliament for the period from July 2006 through December 2007. The first six months of this time revolved around the scandal of the Tasmanian Compliance Corporation's (TCC) monopoly control of builders' accreditation. The 'TCC Affair' came into the public domain at the end of June 2006 and peaked as a public issue by the end of the year only to re-emerge to dominate public debate late in 2007. The scandal took the wind out of the sails of Premier Paul Lennon's Labor Government, which had won a hard-fought electoral mandate in March 2006. The second issue concerned a pulp mill proposed by the Gunns Corporation for construction in the Tamar Valley in northern Tasmania. This occupied the whole of 2007 and only lost some intensity after the 2007 Federal election when it was overtaken by the re-invigorated TCC affair.

The TCC affair

A secret agreement was made prior to the March 2006 State election between a Government minister and the Tasmanian Compliance Corporation (TCC) which gave the corporation a monopoly to control the accreditation and registration for those working in the building industry. When the matter became public in early July 2006, the minister responsible, Deputy Premier, Bryan Green, offered a personal apology in Parliament for entering into this covert deal in an attempt to defuse the issue but the controversy deepened.

Green was forced to resign from the ministry in mid-July 2006 although the Government used the language of 'standing down' and 'stepping aside' to suggest Green would be back to resume his old leadership positions as soon as the matter was resolved. Premier Lennon even took over the vacant portfolios and declined to appoint a new deputy as an indication of how strongly he felt that Green's departure was temporary. By late October, this hope evaporated. Attorney-General Steve

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Kons was appointed the Deputy Premier and Michelle O'Byrne took over as Minister for Community Development while the Premier retained Green's portfolio of Economic Development and Resources.

Tim Ellis, the Director of Public Prosecutions, laid criminal charges against three individuals for their parts in the affair in late October 2006. Bryan Green, his electorate officer Guy Nicholson and John White, a former ALP minister and a director of the TCC, were accused of conspiracy while Green and White were also charged with interfering with an executive officer in carrying out his duties. The laying of criminal charges impacted on the Legislative Council committee that had done so much to bring the matter into the open. Initially, the committee understood it would not violate the *sub judice* constraints as long as it did not pursue subjects that bore directly on the possible criminality of the three accused. (The second term of reference related only to the optimum framework for the accreditation of building practitioners). However, before it could meet again, Paul Harriss MLC, the committee chair, announced the committee would suspend its inquiry until after the trial expected some time in 2007 when the Leader of the Government in the Legislative Council moved a successful motion to suspend the Committee's operations until the Legislative Council could be satisfied that the Court proceedings would not prejudice related proceedings in the Supreme Court.

As the Crown prepared to prosecute the case in October 2007, DPP Ellis announced the dropping of the conspiracy charge, which reduced the number of defendants by one since Nicholson was not included in the second charge. The case went to trial in November 2007 and John White delivered the first of several shocks when he changed his plea to guilty. Bryan Green stood alone in the dock. Dissembling and a loss of memory by a number of key Government or ALP witnesses marked the two-week trial reaching an apex when that the DPP felt obliged to request that the Premier himself be treated as an 'unfavourable witness'. In the end, the jury was unable to agree on a verdict. Green will now be re-tried before a fresh jury in the Supreme Court, with his new trial set to start in February 2008.¹

The bizarre twists did not end with the hung jury. In early December 2007, a few days after the trial of Green collapsed, just as John White was due to appear before Chief Justice Peter Underwood for sentencing, the *Mercury* revealed another secret TCC deal. This was an arrangement by the TCC directors to pay White's legal fees on the condition that he not be convicted of any crime. The revelation so embarrassed White's counsel that he sought a special recall of the Supreme Court to explain that he was unaware of the agreement when he had pleaded with the Court not to record a conviction. Subsequently, to the ire of the TCC's many victims, and despite the embarrassing revelation, no conviction was recorded against White. The Chief Justice surprisingly threatened the *Mercury* with contempt of court for having published news of the secret deal.

¹ This article was written in December 2007.

A Matter of Parliamentary Privilege

The Government revoked the TCC monopoly agreement following a KPMG audit in late September 2006. However, Premier Lennon refused to make the KPMG report public, citing advice from the Solicitor-General that there was a real risk that the report would be found to be defamatory of the directors of the TCC and that any 'unprotected' publication of the report would expose the publisher to the risk of action for defamation. If that publisher were the Premier, the liability to fund any award of damages would rest with the State.

The Legislative Council through its President, Don Wing, stoutly defended its absolute privilege to an action for defamation in respect of evidence provided to a parliamentary committee and quoted from advice received through the President of the Senate from the Clerk, Harry Evans. This advice, and that from Bret Walker SC, confirmed that the Legislative Council Select Committee enjoyed full parliamentary privilege from actions for defamation.

Gunns' Tamar Valley Pulp Mill

The Tasmanian Government's hopes that the Gunns' proposal for Australia's largest pulp mill would be protected from substantial public criticism suffered a severe setback in January 2007 when Julian Green, Chair of the Resource Planning and Development Commission (RPDC) followed fellow RPDC pulp mill assessment panel member Warwick Raverty in resigning from the assessment panel. Both received advice from the State's Solicitor General, Bill Bale, that the actions of the Government's own taskforce promoting the mill had created a real possibility of apprehended bias.

Christopher Wright, a retired Supreme Court judge, was appointed to replace Green in February. Wright's insistence that Gunns meet all RPDC's requirements for information and his prediction that the timeline for the assessment process would extend to November provoked strong reaction from Gunns. The timber corporation withdrew its \$1.5 billion development proposal from the RPDC process. Despite claims that it had not encouraged the Gunns' action, the Government was prepared immediately to offer an alternative assessment procedure.

Probably one of the most significant pieces of legislation considered by both Houses in Tasmania's recent history was debated and passed through Parliament with some amendment, during the March-April sitting period. The legislation was the Pulp Mill Assessment Bill 2007 (No. 9), which received Royal Assent on 30 April 2007.

The Government argued it provided Gunns with the certainty it required, an end date for assessment, without compromising Tasmania's rigorous environmental standards. Critics pointed out that some standards had gone missing and that the Act

provided for more than just assessment. The legislation contained three principal components. The first was that independent experts would have to assess the project against some of the RPDC guidelines; second, that both Houses of the Parliament would issue the pulp mill permit by resolution; and third that legal challenges to this assessment and permit process would not be allowed.

The passage of the bill was virtually guillotined through both houses. This did not present much of a difficulty in the House of Assembly where only the four Greens Party Members resisted the Government legislation. The Legislative Council was less easily pressured. Amendments were forced on the Government and the division was carried 9 votes to 5 with the President indicating his opposition to the bill.

One of the five MLCs who voted against the new assessment process was Terry Martin, the ALP Member for Elwick. Martin's opposition was very public and the Government's reaction was very personal. In the end, Martin was expelled from the Parliamentary Labor Party but he refused to give up his membership in the ALP.

The report by Finnish consultancy firm SWECO PIC Oy was presented to Members during July 2007. Both Houses resumed sitting in late August and were given five sitting days to accept or reject the pulp mill permit, which the Government tabled for resolution by both Houses at this time. The joint resolution passed the Legislative Council on 30 August with a vote of ten in favour with four against although the President of the Council, Don Wing, publicly expressed his disappointment that his position had prevented him from taking part in the debate and voting against the resolution. A few hours later, as expected, the House of Assembly supported the project, with only the four Greens MPs voting against the resolution. However, Labor backbencher Lisa Singh was allowed to abstain from the vote.

However, this was not the end of the process. Initially the Commonwealth had agreed to accept the State's RPDC assessment but, with the collapse of the RPDC process, the Commonwealth had to make its own independent assessment. The day before the Tasmanian Parliament issued the pulp mill permit, the then Federal Environment Minister, Malcolm Turnbull, announced a delay in his decision on whether to approve the pulp mill in part due to the extraordinary number of submissions made to the Minister during the period of public comment. On 4 October 2007, as expected and well before the Federal election, Turnbull extended Commonwealth approval to the mill. Taking some of the political heat out of his decision, he added 24 further conditions to the permit, which made for 48 in total.

Sesquicentennial Sitings

Both Houses of the Tasmanian Parliament met for the first time outside of Hobart between 17-19 October 2006 as part of the celebrations marking the 150th anniversary of a bi-cameral Parliament and responsible Government in Tasmania. The venue was the Albert Hall in Launceston. The sitting was significant in that

both Houses met and carried out their business at the same location away from the capital. The two Houses each conducted a full range of business, including the consideration of legislation, over the three days in Launceston.

On 1 December 2006, the two Houses then held at a Joint Sitting in Hobart to commemorate the sesquicentenary with the Governor of Tasmania, the Honourable William Cox, addressing Parliament for the occasion. In accordance with resolutions agreed by both Houses, Members of the House of Assembly were seated beyond the Bar of the Council in places allotted for that purpose and Joint Sitting Rules provided, amongst other things, for the Premier of Tasmania and the Leader of the Government in the Legislative Council to address the Joint Sitting at the conclusion of the Governor's address.

Separate Appropriation Bill

As part of a package of budget and financial management reforms, the Government introduced into the Parliament a separate Consolidated Fund Appropriation Bill containing, for the first time, the appropriations for independent entities. These included specifically the House of Assembly, the Legislative Council, the Legislature-General², the Office of the Ombudsman, and the Office of the Governor. Although independent, the Auditor-General, is funded through a Reserve-by-Law item under the *Financial Management and Audit Act 1990*.

Procedurally, some minor changes were required in order for the House to deal with two Appropriation Bills both during debate in the House and during the consideration by the relevant Estimates Committee. Nonetheless, the move to a separate appropriation for the Houses was an important recognition that the Parliament is not an agency of Government.

Subsequent to the passage of the Appropriation Bills, both Houses agreed to amend the *Financial Management and Audit Act 1990* to provide a minor change with regard the Ombudsman. The amending Act provides that the Ombudsman is deemed to be the responsible Head of Agency and therefore able to receive a separate appropriation directly from the responsible Minister. Previously it was the Secretary of the Department of Justice who was the responsible Head of Agency. The Attorney-General was, and still remains, the responsible Minister.

The Business of Government

Despite the TCC scandal, the Premier stunned community groups in early July 2006 with the announcement that the controversial \$300 million coastal estate housing

² Legislature-General provides support services to both Houses of Parliament and their Members through the Joint House support staff, the Parliamentary Reporting Service, the Parliamentary Library Service and the Parliamentary Printing and Systems Services.

project at Ralph's Bay near Hobart was back on the table after having been shelved the previous year. The Premier declared it to be a 'project of state significance'. The Walker Corporation, the project's proponent, added to the public cynicism by later admitting it had only withdrawn its estate proposal until after the March election to see if the ALP would be returned with a majority. The motion to confirm project of state significance status for the proposal passed the Parliament in September but only after the Legislative Council's demanded that the Government extend a nearby conservation area.

Premier Lennon provoked another round of debate over the Government's role in early September 2006 with an announcement that the Hawthorn Football Club would be known as the 'Tassie Hawks' as a result of a five-year sponsorship deal. Critics intimated that the deal was more intended to ensure the Government's investment in Launceston's Aurora Stadium did not become a white elephant than to promote 'brand Tasmania' interstate. The naming rights sponsorship has drawn fire from nearly all sides especially community groups struggling for social development funds ever since with the opportunity cost of the sponsorship used as a benchmark for Government insensitivity to the Tasmania's social or health problems.

The decision by Rayonier, manager of *Taswood*, a joint venture between Forestry Tasmania and GMO Renewable Resources, to sell 290,000 tonnes of their jointly owned softwood to Forest Enterprises Australia sparked another timber controversy early in 2007. The Government found itself at the centre of this issue due to its half share of *Taswood* which own 42,000 hectares of radiata pine forest in Tasmania. *Auspine*, at risk of having to shut its milling operations due to loss of its timber supply, protested that the Government should have taken employment into account when allowing the *Taswood* decision. The Premier, citing advice from the Solicitor-General, claimed that section 12A of the *Forestry Act 1920* did not apply to the deal. Although the matter was referred to the Joint Standing Committee on Environment, Resources and Development for determination, the Government bowed to public pressure. An agreement was received to source subsidised Government timber on the west coast near Strahan to meet *Auspine*'s intermediate needs to continue operating.

Social Welfare

In August 2006, Carol Reeves, the wife of the Children's Commissioner, David Fanning, was appointed the head of Children and Families Services. The potential for a conflict of interest caused concern in both political and administrative circles especially as the role of the Children's Commissioner had been especially prominent over the past two years within Tasmania. A month later, Fanning announced his resignation to take up an appointment as the foundation magistrate in Australia's first Neighbourhood Justice Centre. Filling the ensuing vacancy became another source of drama. Shortly after Health Minister Giddings had to admit

serious failings in the child health protection system, she had to accept the resignation of Fanning's stand-in replacement, Dennis Daniels, for having worked in a facility where child abuse had occurred four decades previously.

Premier Lennon recaptured the social justice agenda to some extent in October 2006, and achieved one of his rare public successes in this period, when Tasmania became the first State in Australia to compensate members of the 'Stolen Generation'. The Government established a fund of \$5,000,000 for the Aboriginal children forcibly removed from their families.

Health Issues

Health was a constant headache for the Tasmanian Government as for other States throughout the period under review. The Lennon Government's rationalization of health services through its Clinical Services Plan reached a national audience when then Prime Minister John Howard announced that the Commonwealth would take over the Mersey Hospital. The dramatic gesture provoked not only a debate about State-Federal responsibilities but also a clamour from other regional hospitals on the critical list due to the Clinical Services Plan for similar Federal help.

The State's restructuring of health costs was not limited to the hospitals. In his June 2007 Budget, Treasurer Michael Aird announced an Ambulance Service fee would be imposed on a 'user pays' principle from 2008. However he was unable to say how the new tax would be imposed and what its effects would be in rural areas far from medical facilities. Ambiguously, Aird simply asserting that an appropriate model would be developed before the charge came into force. By year's end this model was not yet forthcoming.

In November 2007, the Parliament passed legislation to permit therapeutic cloning, which will allow for the creation of embryos to provide stem cells in scientific research. House of Assembly members were allowed a conscience vote and it passed with 15 supporting the bill and nine opposing. The Legislative Council passed it by an 11 to three majority.

Legislative Council Elections

Elections for the Tasmanian Legislative Council are conducted on a six-year rolling cycle with three Members going to the polls in May in one year and two the following year until the sequence is complete. All three sitting Members were returned in the elections, which were held for divisions of Nelson, Pembroke and Montgomery on 5 May 2007. Sue Smith was returned unopposed in Montgomery; Jim Wilkinson won on first preferences of 61.6 per cent while Allison Ritchie required the distribution of preferences in the Division of Pembroke to retain her seat. ▲