REPORT OF THE SELECT COMMITTEE OF PRIVILEGE ON A MATTER ARISING IN THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Standing Orders Suspension - Motion

On motion by **Hon Kim Chance (Leader of the House)**, resolved with an absolute majority -

> That so much of standing orders be suspended as will enable order of the day 526, Report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations, to be now taken.

Committee

Resumed from 28 November. The Deputy Chairman (Hon Ken Travers) in the chair.

Amendment to Motion

Progress was reported after partial consideration of the following motion moved by Hon Murray Criddle -

> That the recommendations contained in the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations be adopted and agreed to.

to which the following amendment was moved by Hon Kim Chance (Leader of the House) -

> To amend the motion by deleting all words after the word "That" and substituting the following -
>
> (1) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the committee by Hon Shelley Archer warrant the house to determine that Hon Shelley Archer should be expelled from the Parliament.
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> (2) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the committee by Hon Anthony Fels warrant the house to determine that Hon Anthony Fels should be expelled from the Parliament.
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> (3) Recommendations 3, 6, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 be agreed to.
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> (4) The house defers consideration of recommendations 1, 4, 7, 11 and 14.
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> (5) Noting the findings of the select committee in recommendations 2, 5, 8, 12 and 15 that Mr Nathan McMahon, Hon Shelley Archer, MLC, Hon Anthony Fels, MLC, Mr Brian Burke and Mr Noel Crichton-Browne have provided false evidence to the select committee, the house refers these findings to the Director of Public Prosecutions to assess whether those persons should be prosecuted for a breach of section 57 or of any other provision of the Criminal Code, and, if of that view, to commence such prosecution or prosecutions.
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> (6) The house notes the select committee's recommendation 35 and authorises the disclosure or publication of the evidence taken by the committee and of any documents presented to the committee to the Director of Public Prosecutions and to any other agency or agencies to which any matter in the report is referred to the extent necessary or expedient to enable the Director of Public Prosecutions and any such agency or agencies to discharge their functions.
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> (7) The house refers the select committee's observations 1 and 2 to the Attorney General with the request that he ask the Solicitor General to consider referring, and if he considers it appropriate to refer, the matters discussed in the observations and relevantly in the report generally to any appropriate agency or agencies for consideration in accordance with their functions.
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> (8) In relation to observation 3, the house notes that Hon Shelley Archer may have committed a grave contempt of the Parliament and refers this observation to the Standing Committee on Procedure and Privileges for its consideration and report.

Hon BARRY HOUSE: Towards the end of my comments yesterday, I was addressing some issues in the report that had been either questioned or challenged in some way, and I was attempting to convey to members how the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations had addressed them. I had spoken about the deliberations, the use of counsel assisting and some of the findings. I noted that there were a large number of findings on which people had made various comments.

Some of the involvement of various people was as a result of deliberate conduct and some involvement of others was as a result of unwitting conduct. However, the committee had no option but to report all breaches and contempts. Nevertheless, they lined up the same in the report, as members will see in the report. Members might have individual views about the seriousness or fairness of that, but the committee was obliged to report a breach as a breach and a contempt as a contempt; we had to call it as we saw it, which is what we did. I explained yesterday that the committee was faced with a situation in which it had no options or flexibility regarding the findings. The committee had to report them regardless of their degree or size. The committee had a degree of flexibility only on the penalties, and it could differentiate between the degrees of breach or contempt only with regard to the various recommended penalties.

I refer members to chapter 2 of the report regarding penalties. The committee had at its disposal a number of penalties, ranging from no penalty at all for minor or technical breaches through to expulsion or even imprisonment at the far end of the scale. The committee was a little frustrated at some points about the inflexibility of the penalty range that we felt was available to us. I refer especially to the ability to recommend a meaningful fine. We should not forget that of all the committee's recommendations and findings, there have been, in many cases, serious indirect penalties incurred by some people. For example, one of our recommendations is that Hon Shelley Archer and Hon Anthony Fels not play a part in any committees of this chamber for the duration of this Parliament. That implies an indirect penalty because members are paid for their participation on committees. Many people have incurred significant costs for legal representation. Although that is their choice, it must be recognised. The most serious indirect penalty relates to the damage to each member's reputation, credibility, political career and public life. That is an end product of the process.

For a variety of reasons, the committee rejected expelling the members. I support that recommendation because, firstly, expulsion of a member is unprecedented in Western Australia, and, secondly, expulsion should be used only as a last resort and be reserved for serious criminal conduct. It will be another matter if this place endorses certain recommendations and other steps are taken, charges are laid and it is proved that the members gave false evidence and committed perjury. At that point it will be taken out of our hands, and the members would be automatically disqualified if they were found to be guilty of those offences. However, the members warrant and deserve due process and procedural fairness. It is another matter to talk of expelling the members even before the Legislative Council has considered this matter, let alone to expel them before any possible court proceedings that may follow if this chamber sees fit to refer certain matters to the Attorney General, as the committee has recommended, or, as is contained in the amendment to the motion, to the Director of Public Prosecutions. It is grossly unfair and it is a massive overreaction to talk about expelling any member - particularly the two members involved, Hon Shelley Archer and Hon Anthony Fels - at this stage. That is why the committee rejected recommending their expulsion. It is regrettable that this part of the amendment seems to have more to do with politics than with any relevance to the privilege committee's report and process. I do not support expelling either member, and a penalty should not be imposed before a trial has been conducted. Also, members of Parliament are elected by our constituents, and the public should decide to remove us as members of Parliament. That decision should be left in their hands. Only in extreme circumstances should that decision be taken out of their hands. That is where the matter rests as far as I am concerned. I did not support the expulsion of the members from Parliament as a committee member and nor will I support their expulsion when this matter is voted on in this place.

The committee was not in a position to judge the criminality of the offences under the Criminal Code. That was not the committee's job and it is not the job of the Legislative Council either. I am talking about a parliamentary proceeding and not a court of law. If other matters that the committee identified are possibly criminal offences, the committee has recommended that they be referred elsewhere for the justice system to take care of. It is not our job to do that.

A previous speaker referred to proportionate penalties. The committee considered that it is out of proportion to recommend the expulsion of the members on this matter. There is a hint that if the amendment to expel the members fails, a motion could be moved to suspend the members on full pay. The committee did not recommend or support that, and I do not support it. We have considered a motion to suspend the members with pay because that was done in the other place concerning a select committee this year. Frankly, that is a joke. Why should a member be given a holiday on taxpayers' money? That is effectively what it means. That is one of the reasons that we have rejected that notion. A suspension without pay was considered and discussed at some length. This is the one part of the report on which the committee members had slightly different views. It was not as though I did not actively consider it an option. I was unclear and uncertain about the ability of this Parliament to suspend a member without pay because our salaries and conditions are determined by the Salaries and Allowances Tribunal, not by this Parliament. We received advice on this matter. That advice was unclear as to whether we had the authority to suspend a member without pay. That is why I came to the conclusion, along

with Hon Murray Criddle, that there was not enough certainty about that matter to recommend suspension without pay. Members are also entitled to due process, and we cannot impose a penalty without a trial either.

Other issues have been canvassed and questions have been raised about the fact that the committee may have gone beyond its terms of reference on certain matters and it may be biased. I assure the Legislative Council that all those matters were considered very thoroughly and with a great deal of care during our deliberations. We took advice, we considered that advice and we made a decision to proceed as we did.

In terms of natural justice, we adopted standing order 330, which applies to standing committees, which we did not have to do. In view of the public scrutiny towards the proceedings of Parliament, we felt that that was a wise and sensible path to follow. This standing order afforded all witnesses and others access to their preliminary findings prior to publication. It afforded them more access to natural justice in the whole process than any privilege committee of this Parliament has done before.

I agree with the comments made about the lack of training and education. It is not clear in many members' minds what some of these issues really relate to. That has led to many of our recommendations. There must be a much greater focus by the Legislative Council on addressing those things in the future. There is an obvious lack of understanding of some of the principles of Parliament, such as parliamentary privilege, not only among members of this chamber, but also among members of the general public and, as I mentioned yesterday, among members of the legal fraternity in this state. They think they know everything about the law but they do not understand some of the ramifications and the meaning of parliamentary privilege and parliamentary procedures. A few may have learnt a bit from this process, and I hope that is the case.

There is an obvious need for the Legislative Council to amend some of its standing orders to clarify its rules and procedures in language that can be easily understood. There is a need for them to be expressed in legal terms but they have to be understandable. This Parliament does not consist entirely of lawyers, and nor should it. It is a representative democracy made up of members with a wide variety of backgrounds. That should be the case well into the future. We need it expressed in language that is understandable.

There is an obvious need for the relationship between the Parliament and the CCC to be clarified. I do not need to say any more about that. The whole Western Australian parliamentary system understands that. There are reviews of process continually. That relationship needs to be explored further in terms of how the practical impact of it all unfolds and what is the best way forward. This all points to the need for Parliament to define and claim its own destiny in terms of our parliamentary democracy. If we do not seize this challenge, the powers and functions of this place will gradually be eroded to the point of irrelevance. We will have our rules, procedures and even decisions dictated by lawyers from St Georges Terrace, the media, lobbyists or others. They will not be decided here in an independent objective way, which is what Parliament should be doing. If this happens, the Legislative Council will be a museum in 10 years' time. That is a very scary prospect. It would not be a positive move for governance of this state. The Legislative Assembly may well find itself in the same position. The issue is very serious because of the longer-term consequences.

We are addressing this report and the recommendations of the privilege committee and the response of this chamber immediately. I stand by our report, our procedures, our findings and our recommendations. I want to see a resolution that gets to the truth of this matter as soon as possible, one that exposes improper behaviour by certain people where it occurred and provides for appropriate penalties, but at the same time provides fairness for everybody involved and protects the role of this house of Parliament.

Hon ADELE FARINA: As the third member of the committee, I feel the need to speak. I seek the indulgence of the chamber to read heavily from my notes, as other members have done, because we are dealing with complex and legally technical issues. Before anyone asks, yes, I did write my own speech notes, but I do acknowledge the useful support -

Hon Norman Moore: You're being very sensitive about that.

Hon ADELE FARINA: The Leader of the Opposition questioned the Leader of the House.

Hon Norman Moore: Because other people have been criticised by your side of Parliament.

Hon ADELE FARINA: We will even it out. In any event, I would like to acknowledge the assistance of the Parliamentary Library for researching a number of matters and also the officers of the Legislative Council, in particular, the Clerk and the clerk assisting the committee.

Hon Norman Moore interjected.

The DEPUTY CHAIRMAN (Hon Ken Travers): Order, members! This debate has been held in relative silence for the past two or three days. I urge members to allow Hon Adele Farina to address the Chair, and ask

members to continue to conduct themselves in the manner experienced previously in this debate, which has done the chamber a degree of credit.

Hon ADELE FARINA: The task before the select committee was certainly a very difficult and complex one. Committee members were faced with a set of unique circumstances that I do not believe have ever been faced by a privilege committee before. However, I do not think that the full extent of the uniqueness and the complexity really hit us until the legal letters started flying. These brought with them a whole new lot of unique issues for us to deal with. The Corruption and Crime Commission intercepts added to that.

The Select Committee of Privilege was required to come to this task with an open mind; I believe all three members of the committee did this. We were required to look at the evidence before the committee in the light of the standing orders and the custom, practice and usage of this chamber. We also needed to have regard to precedent in terms of decisions of former privilege committees. We found - this was quite frustrating for the committee - that the range of penalties that many people think are available to the committee are not available to the committee. We were further frustrated by the precedents set by other decisions of other privilege committees, as the penalties that have tended to be imposed have been quite light. We worked within those parameters, having regard to all those things. As Hon Barry House indicated, we gave due consideration to each and every matter that was before the committee. Simply because the select committee presented a unanimous report to this chamber, members should not be quick to think that the findings or recommendations of the report were easily formed by the committee. A lot of time and consideration was given to each matter before the committee. As Hon Barry House said, there was quite robust discussion on a number of issues, but it was healthy robust discussion that helped us to work through the issues.

I take this opportunity to thank Hon Barry House and Hon Murray Criddle for their efforts on the committee and for working together so well. It certainly was a difficult task, but the committee members worked very well together. Hon Murray Criddle was an excellent chairman and he was very patient, as he needed to be throughout this process. I also take this opportunity to thank the staff who assisted the committee. Members of this place are very fortunate to have fantastic staff. They are professional, very experienced and very knowledgeable. The select committee went through a number of staff as a result of staff changes in this place, which added to some of the frustration of the committee. I thank all those who have been involved, including the former Clerk Assistant (House), Nigel Pratt; the former Clerk of the Legislative Council, Mia Betjeman; and the current Clerk of the Legislative Council, Malcolm Peacock, who has been fantastic throughout the whole process and who had to pick up the issues midway through the committee's inquiry. I also thank Jan Paniperis and Kelly Campbell, who assisted the committee. In particular I acknowledge the work of Paul Grant, who really had a difficult job in taking on the responsibilities of Clerk Assistant (Committees) at a critical time in our processes. He quickly came up to speed on all the issues and across a huge number of documents, and his legal advice throughout the process was greatly appreciated and relied upon by the committee. I also thank the Hansard and Parliamentary Library staff who enormously assisted the committee. As Hon Barry House indicated, the three members of the committee are country members. As a result of the heavy workload of this committee, we were away from our electorates a lot more than we would otherwise have been. As a result, our electorate officers carried a fair amount of the burden in our electorates for us, so I acknowledge and thank them as well.

I will talk about some of the issues that I touched upon earlier. The fact that the committee provided a unanimous report should not lead members to think that we reached our decisions lightly. We gave a lot of consideration to them. We understood the importance of the work that we were doing and the ramifications of that work for certain individuals. We carried the weight of that quite heavily - I certainly did. However, that did not deter us from undertaking the task that we had been given without fear or favour and to the best of our abilities. It has been suggested that because a particular finding was not made, the committee just dismissed it out of hand. It needs to be understood that certain issues, such as expulsion or suspension with pay, were considered in great detail. Just because the committee did not make such determinations does not mean that those matters were dismissed out of hand. Everything was given a lot of consideration.

There are a couple of misunderstandings about the report that I would like to clarify, particularly relating to observation 2. Many people have indicated that the committee did not consider the strategy outlined in observation 2 as being of particular concern, because it made no finding on it. The reality is that it was arguably outside the terms of reference of the committee to make a finding. That is the only reason that the committee did not make a finding and why only an observation was made. If anyone were to read the full text of observation 2 and not just selected bits of it, it would be accepted and appreciated that the committee considered as a matter of grave concern the strategy that was in play and the improper use of the committee process that was proposed by that strategy. Had it been within the power of the committee to do more than simply observe, I am sure that the committee would have given further consideration to that matter. Unfortunately, it was not within our terms of reference to do so.

It has been suggested that a lack of training and inadequate induction is an explanation of why members may not have been aware that the disclosure of information by them was a breach of parliamentary privilege. The argument is that as a result of this lack of training, they were unwittingly or inadvertently placed in a position in which they disclosed information and breached parliamentary privilege. As such, this has been considered by some to be a defence for their actions. I have a problem with that argument. It is wrong to suggest that there has been no training of members. That is simply not the case. The report details the training that has been provided to members. There were two fundamental areas of training. The first was a half-day induction at which members were provided with a quite detailed presentation by the former Clerk of the Legislative Council. I speak in terms of the two members against whom findings were made, being Hon Shelley Archer and Hon Anthony Fels. Members who attended the induction were provided with a quite comprehensive manual. They were also provided with a little pocket booklet that they could carry around with them. The booklet outlines in a succinct but detailed form the procedures and privileges of the house and parliamentary privilege. It states at page 5 -

> Because parliamentary privilege is a highly complex area of law, members are advised to seek advice from the Clerk's Office if they are faced with an issue that appears to involve any question of privilege.

The half-day seminar was open to not only new members of Parliament who were admitted in 2005 - in fact, all members of this house were invited to attend the induction, which was conducted over two days. In addition, members of parliamentary committees were provided with a further induction session. A memorandum was provided to each committee member detailing all parliamentary privilege matters that relate to committee work. The report details that both members received this memorandum and had it available for their use. The committee concluded that, based on the information provided at the seminar, the induction that was held at the first committee meeting and the documents that were provided to members, sufficient information was provided to the members to give them an adequate understanding of parliamentary privilege and how it relates to the work of committees. However, that is not to say that the system cannot be improved. The select committee recognises that there is always room for improvement and that more should be done. Accordingly, we made some recommendations to this effect. The select committee also recognised that it is a responsibility of members of Parliament to know how to do their job. It is also the responsibility of members of Parliament to read and understand those manuals and, if they do not understand any aspect of those manuals, to ask questions and to better inform themselves.

It was suggested that a member of Parliament could be compared with a mechanic. If members want to make that comparison, that is fine. The suggestion was that an apprentice mechanic could not be expected to fix a car by simply handing him a manual. I totally agree. However, the responsibility on that apprentice mechanic would be to read, absorb and understand the information in the manual once it had been provided to him. If the apprentice mechanic was asked to perform a task that he had not previously been exposed to - for example, changing a radiator; I will keep it simple as I do not know much about cars - in circumstances in which he had never been placed, clearly it would be reasonable to expect the apprentice mechanic to read the manual on how to change the radiator. If he did that, he would also possibly see a reference in the manual to having to check with his supervising mechanic before he started tinkering with the car, and that he should get further instruction about the correct procedure to follow. It would also be reasonable to expect the apprentice mechanic to apply commonsense and, when faced with the situation that he had not previously experienced, to inquire and get some assistance before he undertook the task.

Equally, that can be said about new members of Parliament. If members of a committee are faced with a situation in which they are asked either to propose something to a committee, to reveal deliberations of the committee or to provide updates on the progress of consideration of a committee matter, they should go to the manual and memorandum with which they have been provided. If they did that, they would see the sentence in the small pocket booklet that I have just read from that advises members to seek advice from the Clerk's office. In any event, it is reasonable to expect members of this house to have commonsense and to understand that such a situation could potentially be an issue and that they should receive advice before proceeding down that path. It is absurd to simply suggest that ignorance of the law or the standing orders, customs and usage of this place is a defence. It is equally unacceptable to suggest that wilful blindness is a defence. The bottom line is that when we take on this job as members of Parliament, we take on a responsibility and it is up to us to fulfil that responsibility to the best of our ability and to make sure that we are well informed about how to go about doing our job. That is not to say that we will not encounter circumstances that we do not know how to handle, but that is what the Clerk's office is there for, and members are well aware that they should avail themselves of that service.

Much was made about the meaning of "deliberations". It was said that there is a lot of confusion about what the word "deliberations" actually means. It is true that the committee acknowledged that there appeared to be a lot

of confusion about the meaning of "committee deliberations". However, the committee offered no opinion on how much of that confusion was genuine and how much was convenient. I would hazard to argue that if members read through the committee report, they will find that genuine confusion can be seen in some of the evidence. In other cases members may have to ask themselves whether it is genuine confusion or whether it is more a matter of convenience. I am sure that members who have read the report in detail would be as amazed as I was, when I initially heard the evidence, at the level of knots that some witnesses got themselves into as they tried to find a distinction between "formal" deliberations and "informal" deliberations or, as some other members have put it, between "committee deliberations" and "proceedings".

The select committee has read extensively on this issue of the apparent or alleged distinction between formal and informal deliberations. In all the material and in all the authorities examined, the committee could not find the application of a distinction between "formal" and "informal" deliberations. Furthermore, as a result of that, we could not get any guidance on where that dividing line might actually sit if there is such a distinction.

Hon George Cash quite rightly pointed out that there is a distinction between committee deliberations and committee proceedings. I will explain the distinction as it has been and continues to be applied by the staff of the Legislative Council Committee Office and exactly how it applies in this place. Contrary to the view put by Hon George Cash, this house and the staff of the Legislative Council Committee Office have consistently applied the very wide definition of "committee deliberations" as used by the select committee at paragraph 1.42 of the report, and as applied by the 1997 Select Committee of Privilege. I looked up the literal meaning of "deliberation" in the *Concise Oxford English Dictionary*. It defines "deliberation" as, among other things, a weighing in mind, careful consideration, discussions of reasons for and against, and debate. In the understanding of the word "deliberations", that is the view most people who put their minds to it would hold; "deliberation" means discussion. The standing orders, when read in context, provide for that wide interpretation as it has been used and has been applied consistently by this house and by the Legislative Council committee staff. In order to get that wide interpretation, one needs to look at standing orders 326, 332, 339, 351, 358 and 359. These standing orders clearly distinguish between proceedings at which witnesses and other members of the Legislative Council, and in some circumstances members of the public, can attend; for example, hearings, whether they be public or private. These standing orders also define "deliberations" as those which only members of the committee, staff and, in some circumstances, other members of the Legislative Council who have been granted leave may attend. There is, therefore, quite a distinction. The very clear distinction between "proceedings" and "deliberations" is hearings. That is a very clear way to understand that distinction.

Standing order 332 is the only standing order that associates deliberations with a draft report. Some suggestion was made that "deliberation" relates only to a formal discussion in consideration of a draft report, and standing order 332 is relied on to provide that conclusion. If members look at the heading of standing order 332, they will see that it was clearly drafted and intended to relate only to the circumstance of deliberations on draft reports. It does not follow that a consideration of a draft report is the only and very narrow definition of "deliberations". To restrict "deliberations" to the consideration of a draft report in the interpretation of standing order 351 would have a very odd side-effect, as it would suggest that a chairman can vote only on matters to do with the draft report, which is absurd. I think this clearly bears that out. This wide interpretation of the definition of "deliberation" is further supported by standing order 2, which states -

> These standing orders shall in no way restrict or prejudice the method in which the Council may exercise and uphold its powers, privileges, and immunities.

It clearly says that standing orders should not be read in a restrictive and limited way. As members who are acquainted with standing orders will know, a lot of the practices followed by this house are not in our standing orders. That is another issue entirely, and I think we need to address that matter. However, much of this practice is in custom and usage. To suggest that the words of any particular standing order, or that the standing orders as a whole, should be read in a restrictive way really does not pay regard to those facts.

The bottom line is that a select committee's deliberations encompass any of that committee's proceedings, excluding the hearing of evidence, whether formal or informal - for those who like to draw that artificial distinction - whether in public or in private, concerning the resolution of a question put to the committee. Committee deliberations include not only the settling of a draft report, but also any general discussion amongst committee members that may result in a decision on any matter being made. That includes a decision on whether to hold an inquiry into a matter. This is supported by the way in which the Legislative Council committee staff deal with the distinction between proceedings and deliberations at a practical level. I acknowledge Paul Grant who provided this advice to me because I have never been a participating or substitute member, so I needed some advice on how that operates.

As I have already indicated, any member of the Legislative Council may sit in on a hearing being conducted by a committee, whether it is held in public or private, although that member may be asked to leave during a select committee's hearings. These participating members must not be present at a committee meeting without the leave of the committee. That is clearly established. A participating member with leave to deliberate and a substitute member for a particular matter or inquiry are entitled to the agendas, minutes and other papers for the relevant inquiry, but they are not entitled to vote. Hence, the committee staff prepare special edited extracts of the committee minutes etc so that participating or substitute committee member receive only the edited minutes and other papers that refer to the inquiry in which that person is participating or has been granted leave as a substitute member to participate in the deliberations. Therefore, that avoids the participating or substitute member having access to all matters that are being considered by that committee. Clearly, in that practice, any deliberation of the committee is considered to be private and confidential. Only when a member is a member of the committee or has such leave of the committee to either participate or be a substitute member does the member get access to that information. The only time that information is made public is when the committee resolves to make that information public or when the committee reports to the house, to the extent that the information is reported to the house.

I draw members' attention to pages 12001 and 12002 in *Hansard* of 26 June 2002 in which discussion took place about conservation and land management regulations. Hon Robin Chapple at one point said -

> One of the concerns I raised at the committee meeting this morning was that it was not the minister who was signing off on that but merely Keiran McNamara, the executive director. I do not believe the committee or the House is beholden to accept the word of an executive director -

At which point, Hon Ray Halligan raised a point of order in the following terms -

> I am concerned about the member. The member asked me whether he could quote the letter. I said yes, because the committee had made it public. I believe that the member is now unfortunately moving into the deliberations of the committee, which are not public.

The Deputy President was required to make a ruling on this matter, which was -

> The standing order is clear: If the letter to which Hon Ray Halligan refers has been made public, Hon Robin Chapple is entitled to quote from that in this House. Clearly any discussion about the deliberations of the committee would be a breach of the standing orders, on the assumption that the deliberations are as has been said. I think Hon Robin Chapple knows the rules, and now that it has been brought to his attention I am sure he will speak accordingly.

That is a very clear explanation about the application and the distinction between deliberations and proceedings, which align with the view that I have put before this Committee of the Whole House.

In response to Hon George Cash's claim that paragraph 1.42 of the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations is false, I think it is really just a matter of semantics. The two-page 1997 Select Committee of Privilege's report has a four-page memorandum of advice from the then Clerk of the Legislative Council attached to it. The 1997 Select Committee of Privilege noted on page 1 of its report that it accepted the advice on the attached memorandum. The Clerk's memorandum noted and applied at page 2 the definition of "deliberations" as defined in the report of the 1997 Legislative Council Committee to Review the Committee System. I accept that it, perhaps, could have been worded a bit differently, but I think we are really playing with semantics. The reality is that that wide definition has been used consistently by this house, committees of this house and Legislative Council committee staff. I think it is the definition that is widely understood by members. Again, I reiterate that the committee acknowledged that there appears to be confusion about what "deliberation" means, but it makes no comment about whether that confusion is genuine or one of convenience.

The committee recommended that standing orders be rewritten to avoid any alleged confusion about the meaning of deliberations, and make it beyond any doubt to avoid a repeat of the contortions the select committee watched some witnesses put themselves through as they tried to explain their alleged confusion as to what constitutes a deliberation; to plug any loophole, if that is what people want to say it is. The select committee recommendation addressing that matter deals with the issue of the alleged confusion. It was not because the committee was necessarily of the view that there was any basis for the alleged confusion regarding the definition of "deliberation". The committee does not say that there is some strong clear evidence in the wording of standing orders or anywhere else that provides a foundation for that confusion. However, the select committee in its recommendation seeks to amend standing orders to put that matter beyond any question of doubt in the future so we do not face the same circumstances in which people try to draw a distinction that clearly is not there and has never been used by this chamber. I have a problem with the argument that confusion about the definition of

"deliberations" should in some way excuse or provide a defence for members in the disclosure of confidential committee meetings and discussions. I think this clearly is not the case.

Leaving aside the definition of "deliberations", the issue of committee confidentiality has been largely ignored by members who have spoken on the report to date. Robert Blackburn and Andrew Kennon in their book on this matter *Parliament: Functions, Practice and Procedures*, second edition, on the issue of committee confidentiality, states -

> An important aspect of how a committee works is the confidence Members have that what they say in private at deliberative meetings will not become public knowledge.

It is absolutely essential that if committee members are to build a consensus and produce an agreed report, they can do so in the knowledge that members of that committee understand what committee confidentiality is all about and respect that notion.

Gerard Carney in his work *Members of Parliament: law and ethics*, printed in 2000, expresses the common law duty of confidentiality as -

> A person who receives or acquires information in confidence cannot use or disclose that information for any purpose other than that for which it was received or acquired without the consent of the person or body from whom or on whose behalf it was received or acquired, unless that use or disclosure (a) is authorised or required by law; or (b) is justified in the public interest.

Sitting suspended from 1.00 to 2.00 pm

Hon ADELE FARINA: Before the break I was running through the notion of committee confidentiality. I had referred to some quotes from Gerard Carney, and I was about to go to a quote on page 325, which states -

> Unauthorised disclosure of committee proceedings constitutes a breach of privilege . . .

Members will be "subject to the jurisdiction of their own House" for such disclosure.

I have covered the issues around the definition of "deliberations" and whether there is a clear understanding of the distinction between "deliberations" and "proceedings" within the standing orders in the custom and usage of the house. I think I have established that distinction to be the longstanding case, so members should not have any confusion about that. Nevertheless, there is also the principle of committee confidentiality, which is a very simple notion understood and known to members broadly and perhaps more specifically known to members regarding cabinet confidentiality. Nevertheless, the general notion is there and Gerard Carney makes very clear that -

> Unauthorised disclosure of committee proceedings constitutes a breach of privilege . . .

Such a breach will result in members being subject to the jurisdiction of their own houses for such disclosure.

The principles are very clear, and hopefully members now understand those principles. The concern that may have been in the minds of some members that perhaps Hon Anthony Fels and Hon Shelley Archer, as new members, could not have been across these issues should be dispelled with this explanation.

I turn now to the issue of bias. Hon George Cash provided members with a very good overview of the rule against bias. Some aspects of the rule against bias were not addressed by Hon George Cash, and members should be aware of them. Natural justice, which embodies the two procedural concepts of the hearing rule and the rule against bias, is not a label for any fixed body of rules. What is fair in a given situation depends upon the circumstances, which has been recognised by the courts. In law, there is authority for the proposition that a less rigorous standard of bias is applied to non-statutory tribunals, and that a condition for disqualification is actual rather than apparent bias.

When dealing with peer tribunals, the courts have also recognised that in certain circumstances leniency in the strict application of the law of bias should apply. Prior professional involvement with a party need not necessarily disqualify a member of a tribunal from hearing a matter in relation to a person. The courts have recognised that in peer tribunals a more robust and pragmatic view about the materiality of previous association should be taken. The courts recognise that the operation of peer tribunals might be greatly frustrated if mere prior professional or social association was enough to ground a disqualifying apprehension of bias. Members, the rule of the notion of bias does exist and it is an administrative concept introduced by the courts that is arguably not applicable to the Parliament. Nevertheless, the house is dealing with a select committee of peers adjudicating on its peers, so if one were to argue that the rules of bias and natural justice do apply, the courts have recognised that in those circumstances a less rigorous approach would be appropriate.

On the issue of the right to object on the grounds of bias, the courts have indicated that the right to object to a person hearing a matter on the basis of actual or apprehended bias must be acted on as soon as possible on becoming aware of the conflict of interest, otherwise the right could be taken to have been waived. The courts have also stated that the appropriate time for a witness to object on the grounds of bias is prior to the hearing and determination of the matter. By not doing so, the witness waives the right to subsequently object.

I draw members' attention to page 408 of the report and the quote from Mr Burke taken from the transcript of his hearing on 17 April 2007, when he stated -

> . . . there may be an apprehension of bias in the fact that she . . .

Being me -

> . . . is here. But I would just like to say I do not mind at all her being here, and I did not raise it previously."

Hon George Cash quoted from the committee's report that -

> The Committee notes that the membership of the Committee was determined by the Legislative Council in full knowledge of all facts on the public record.

The member challenged this statement, saying that the Legislative Council had no knowledge of the witnesses to be called to give evidence. That statement was plainly incorrect. The Legislative Council did have full knowledge, at the very least, that there was every likelihood that Mr Burke would be called as a witness.

The committee was established on 21 March 2007. Hon Shelley Archer appeared before a public hearing of the Corruption and Crime Commission at 10.00 am on 28 February 2007, on which occasion the following was stated by counsel for the CCC - this is a direct quote -

> *"This hearing will examine the communications Mr Burke had with various public officers in order to identify whether these officers have engaged in any misconduct. Turning now to the last matter which involves the Standing Committee on Estimates and Financial Operations. Kazaley Resources is a small mining company.*
>
> *In a widely publicised move in 2005 it pegged the northwest Shovelanna iron ore deposit after the mining giant Rio Tinto failed to renew its lease in time. In April 2006 the then Minister for Resources terminated Kazaley's claim to this iron ore deposit. The matter subsequently became the subject of Supreme Court proceedings initiated by Kazaley to have the minister's decision set aside. These proceedings are still ongoing.*

They were at the time. I continue -

> *Mr Burke and Mr Grill were retained by Kazaley during the course of 2006. This part of the hearing will examine the approach by Mr Burke to the Parliamentary Standing Committee on Estimates and Financial Operations to hold an inquiry into the iron ore policy of this state. As Mr Hall has already stated to the Commission in one of his openings earlier this week, standing committees of Parliament have significant powers including the holding of public hearings and the presentation of reports to the relevant house.*

In this instance the standing committee was comprised of members of the Legislative Council and its functions included examining any matters relating to the financial administration of the state. This hearing will examine the motive behind the request for this hearing and whether there was an ulterior and improper purpose behind the requests for this inquiry.

Yesterday's hearing examined the 2004 inquiry by the Economics and Industry Standing Committee of the Legislative Assembly into vanadium resources at Windimurra.

One matter that arises is whether there has been an attempt to misuse the functions of the Standing Committee on Estimates and Financial Operations and whether any public officer has engaged in misconduct in that attempt.

Hon Norman Moore: Will you just identify the document again?

Hon ADELE FARINA: It is a statement made at a Corruption and Crime Commission hearing by counsel for the CCC, dated 28 February 2007.

There was extensive media coverage of Hon Shelley Archer's contacts with Brian Burke following the Standing Committee on Estimates and Financial Operations hearing and in the weeks leading up to the appointment of the select committee on 21 March 2007. Hon Shelley Archer also gave an interview to the ABC *Stateline* television program just two days after the select committee was appointed in which she referred to the conversations with

Mr Burke about the proposed iron ore inquiry. I think it is clear that certainly this information was widely known in the public domain and was available to the house at the time it made its decision. The chamber should also note that when the house made the decision to establish the select committee and appointed the members of that committee, not one of the witnesses who were likely to be called indicated through letters to the President- as they have done since the tabling of the report - any concern about this matter, nor did they do so at any time during the proceedings, when that opportunity was clearly available to them. The opportunity was also available to this house, if it had any concern about the issue of bias, to provide an instruction to the select committee. The select committee took the issue of apprehension of bias very seriously and considered it in great detail, on not just one occasion, but a number of occasions throughout the process. The committee also went to great lengths to ensure that every measure possible was put in place to ensure that any apprehension of bias was mitigated to the extent possible. Members must remember that we were dealing with a peer tribunal type of situation. To suggest that a select committee could be formed of members who had no contact with other members of Parliament in the same chamber is simply ridiculous.

The view that the committee, having stated its intention to afford witnesses natural justice, failed in its intention by not addressing the rule against bias, is incorrect. The committee stated an intention to afford natural justice to the extent possible under the standing orders, and the custom and usage of the house, by adopting standing order 330, which is a means by which committees may apply a standard of natural justice to the degree that a committee thinks fit. It should be noted that the Legislative Council, in establishing the select committee, did not see fit to provide the committee with the means by which to afford witnesses natural justice. This step was taken by the select committee itself, to the extent it considered possible, having regard to the standing orders and the custom and usage of the house. It should be noted that standing order 330 does not provide for the observance of the rule against bias. As detailed in the report at pages 408 and 409, the select committee gave due consideration to the issue of the rule against bias. The committee adequately addressed the issue of bias, and as such it cannot be successfully argued that the proceedings of the committee are tainted by any alleged failure to do so.

The issue of the ability of the courts to review the proceedings of the select committee, or, indeed, of this house, has certainly been put forward. A number of assertions have been made that one or more of the select committee procedures may have tainted the proceedings of the select committee and, as a result, may be subject to review by the courts. I think those assertions may have been put in perhaps stronger terms by the members who raised them. Members should note that although it is true that parliamentary privilege does not provide a blanket protection against any review by the courts, it is also true that historically the courts have been reluctant to review the proceedings of Parliament unless there is clear evidence that Parliament is acting contrary to the law applicable to Parliament. The reason for this is that article 9 of the Bill of Rights 1689 of the United Kingdom provides that the proceedings of Parliament are not to be questioned or impeached in any quarter in the other place. Gerard Carney, when dealing with this matter, provides some guidance for when courts are likely to review proceedings of Parliament. He states that a court can decide whether an event occurs within the scope of parliamentary proceedings or the other privileges of the house, but, in the event that it does, it cannot question or impeach what has occurred. He also states that no legal proceedings can be instituted in relation to what occurs within the scope of parliamentary proceedings, nor can any legal action rely for support, either in its initiation or defence, on what occurs within those proceedings. He further states that a house is the exclusive interpreter of its standing orders and any statutory provisions insofar as they regulate its proceedings, unless jurisdiction is conferred in the courts by statute.

In the present instance no law applying to Parliament has been breached. The rules of natural justice, including the rule against bias, have been developed by the courts in respect of their own proceedings and the proceedings of administrative decision makers. Parliament is not a court or administrative decision maker. It has never been suggested that the rules of natural justice have application to Parliament or its committees, as there is clearly no law applying such rules to Parliament. Therefore, despite the fact that the committee sought to provide a standard of natural justice to witnesses through the adoption of standing order 330, it does not follow that the notion of natural justice should be strictly followed or, indeed, that it has any application to parliamentary proceedings. This does not mean it is not something that Parliament should consider in the fullness of time and review. All I am simply stating is the current position. Personally, I think we need to review that position, but I am simply trying to inform members of the situation as it currently stands, and I do so picking up on those issues that have been raised by legal counsel for witnesses who have written to the President, and the letters distributed to members. I understand, and indeed it is appropriate, that members would be concerned about some of those issues raised in those letters. However, it is important to remember that the legal counsel in each instance are acting for a witness, and their job when doing this is to put the witness's best arguments forward to provide a defence, explanation or challenge in respect of the decisions of the committee. A legal opinion does not necessarily mean that is what a court would decide if the matter went to court. Certainly, Hon Barry House

outlined this perhaps more articulately than I have when he addressed the Parliament. It is important that members understand this.

Another issue that has been raised is the use of counsel assisting and standing order 357. As members will know, we adopted standing orders to help regulate debates and proceedings, and to help expedite the business of the house. Standing orders are not enacted in the same way as an act; they do not have any legislative effect. They deal only with procedural practice. They must be read in conjunction with, and often subject to, custom and usage. They cannot be contrary to the general law. They cannot vary or create a parliamentary privilege. They are not a form of subsidiary legislation, whose breach may lead to validation of the relevant proceedings, nor are they exhaustive of how committees are to conduct their proceedings.

It is not appropriate to apply rigid rules of statutory interpretation when dealing with standing orders for these very reasons. It is also a well-established principle - one that is highlighted in Erskine May - for committees to conduct their own proceedings as they think fit. It is important that members understand this. Standing order 357 is a very old order. It is probably true to say that it does not add a lot to the conduct of select committees. For the most part, select committees determine their own hearing procedures. Standing order 357 is really not very reflective of the way in which select committees conduct their hearings and proceedings, particularly in recent times.

Standing order 357 states -

> The examination of witnesses before every select committee shall be conducted as follows, viz. - The Chairman shall first put to the witness, in an uninterrupted series, all such questions as he may deem essential, with reference either to the subject referred to therein, or to any branch of that subject, according to the mode of procedure agreed on by the committee. The Chairman shall then call on the other Members severally by name to put any other questions which may have occurred to them during the course of the examination; and the name of every member so interrogating a witness shall be noted and prefixed to the questions asked. All replies to questions put shall be in writing; but if the committee be attended by a shorthand writer the notes of such shorthand writer shall be sufficient.

As most members know, we no longer have shorthand writers in Parliament; in fact, in most situations, select committees are attended by Hansard, and committee hearings are recorded by Hansard, so that in itself is a very clear illustration of the way in which standing order 357 no longer accurately reflects what occurs in select committees. Therefore, to suggest that it should be taken literally with regard to the way in which a select committee conducts its business is, in my view, simply wrong.

There are other examples to show that standing order 357 no longer reflects the way in which select committees conduct their business. For example, often the witness is asked by the chairman whether he wants to make a brief opening statement, and the witness is given an opportunity to do so. That is not covered by standing order 357. There are also occasions when the chairman may be absent from a hearing and another committee member may begin questioning the witness. Members other than the chairman may ask follow-up questions to any question asked by the chairman and thereby redirect the line of questioning. Committee staff often pass written questions to, or confer with, the chairman or committee members during hearings, and sometimes the witness will overhear these discussions and provide a response directly to the issue raised by committee staff. Therefore, the comments of the staff member are recorded in *Hansard* together with the response from the witness. This clearly does not fit well if one is to take a very literal and strict interpretation of standing order 357. In a number of situations, witnesses are now allowed the benefit of counsel. In that situation, witnesses may seek to interrupt the questioning of the committee in order to seek advice from their counsel. Again, this is a practice not recognised under standing order 357. In some circumstances, a more informal discussion arrangement flows in a hearing; again, the strict principles outlined by standing order 357 are not complied with.

If we were to accept the argument advanced by some members that standing order 357 must be strictly interpreted, we would also have to argue that if any of the circumstances I have outlined were to arise during the proceedings of any select committee, the proceedings of any such committee would necessarily be tainted. Parliament surely does not want to argue that position, because it would make the situation unworkable. The fact is that standing order 357 has not been applied literally by select committees; it would be administratively difficult to do so.

Neither the Parliamentary Privileges Act 1891 nor the standing orders provide any prohibition against the use of counsel assisting to ask questions on behalf of, and through, the chairman of a committee. In the absence of such a prohibition, committees are able to determine their own procedures for the examination of witnesses as an addition to, or appropriate practical variation of, the procedures as set out in standing order 357. That it has never happened before simply reflects the fact that those particular circumstances - in the case of our select

committee, very unique circumstances - have not arisen before. When the house established the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations, it entrusted the committee to undertake the investigation. It was left to the select committee to determine how best to conduct the proceedings. The committee did not run off on a folly of its own in engaging counsel assisting; it gave very careful consideration to the particular and unique circumstances of the case, and sought the advice of the Clerk in doing so. This is something that the chamber needs to consider very carefully. The committee had a huge amount of evidence to deal with. It was dealing with Corruption and Crime Commission intercepts, restrictions on the usage of which apply under many laws. Lawyers spend many years honing their skills in litigation law. It is very important, in the presentation of exhibits during the questioning of a witness, to follow certain procedures that will be recognised by a court of law should the matter be taken to that extent. These are not skills that can be acquired overnight. Lawyers spend at least four years at law school, one year as an articled clerk, one year as a restricted practitioner, and several years honing their skills in practice. To expect a chairman of a committee who has no prior legal experience to be able to do that overnight is unreasonable. The unique circumstances of this inquiry necessitated the use of counsel assisting. This was further exacerbated by the fact that most witnesses took advantage of the benefit of counsel, and in some cases witnesses sought advice from counsel before answering any questions, which really slowed down and interrupted the flow of questioning. Some witnesses were also quite skilled at redirecting the line of questioning altogether. It is simply unreasonable to expect a member of Parliament performing the role of chairman to be able to deal with all those issues, together with objections being raised by witnesses in relation to questions being asked, without the necessary skills and experience. I submit to members that the circumstances were unique.

The committee did not do anything unusual. There certainly is a precedent for not complying strictly with standing order 357. The reality is that precedents are established when unique circumstances arise, and this was one such circumstance. I alert members also to the fact that there are further precedents in relation to whether a select committee should seek leave of the house before stepping outside the provisions of standing order 357. In the case of the Easton matter, the select committee chaired by Hon Peter Foss decided to take evidence from counsel for a witness. I am not revealing anything by relaying this because the committee report details this, which I have read. Members will be aware that, the position adopted by this house is that, as a rule, persons who breach privilege or are being investigated for contempt of the house, are not allowed to be represented by counsel. Certainly, this house does not hear counsel on behalf of a witness. In the Easton case, the select committee decided to hear counsel without seeking leave of the house. I argue to the Committee of the Whole House that the circumstances presented to our Select Committee of Privilege were no different. In light of that precedent, members should take some comfort from the fact that the privilege committee operated in an unusual set of circumstances but it did not breach standing orders because precedents exist. I know of at least one other situation when a committee inquiring into a disciplinary matter did not adopt standing order 357. The precedents exist, so I ask members not to be too spooked by the legal arguments presented in the letters from legal counsel assisting the witnesses. It is their job to run their arguments most favourable to their clients. The reality is that there has not been a breach that taints the proceedings of the privilege committee in that regard; precedent exists in this house on that matter.

An issue has also arisen about using Mr Philip Urquhart as counsel assisting the committee. An argument has been advanced that his role created an apprehension of bias. I have looked in some detail at the rules against bias. The law, as has been stated by the courts, clearly states that bias in counsel assisting the tribunal is immaterial provided there has been no evidence that he participated in the decision. I can assure members that Mr Urquhart did not participate in any committee deliberation. The committee understood that we were taking an unusual step, which was necessary in the circumstances, and we were very careful to ensure that we had very detailed discussions with Mr Urquhart before each hearing. We advised him of the line of questioning to be undertaken, and he did not go outside that line of questioning on any occasion. We also provided, at least in the case of the four main witnesses, draft questions to Mr Urquhart for him to settle. He was not involved in advising on any point of order, any objection or any legal issue. He was not present during any deliberations of the committee. He provided the committee with absolutely no advice about findings or the recommendations. I draw members' attention to the letter from Mr Julian Grill that was sent to all the members of this place and remind them that I, together with the other two members of the committee, tabled the letters we received from Julian Grill because our letters included a personal note in which he suggested that it was not the committee that made the decision on the finding against himself. I assure members of this Committee of the Whole that I do not know what he bases that claim on, but it is totally without any foundation. The members of the privilege committee alone made every decision recorded in the committee report.

Members have received a number of letters from legal counsel assisting the witnesses. Members will be aware also, as I have just stated, that the position in this house is that we do not hear from legal counsel. It is interesting that the master manipulators who are involved in this matter have sought a way to ensure that this

house hears from legal counsel even though that is contrary to its position. They have done so by writing to the President and placing him in a position in which he has no choice other than to table those letters; otherwise, he could be subject to criticism. We have before us again a unique situation in which we have received a number of letters outlining legal arguments by legal counsel, even though it is a position of this house, except in very extraordinary circumstances and when leave of this house is given, not to hear from legal counsel. I have addressed a number of the issues raised by legal counsel during my remarks today. I want to focus a little on a couple of the letters, but I will not dwell too much on it because time is progressing and members want to progress this matter. However, a few comments need to be made about the letters. The main thing members need to be aware of - a trend that comes through all the letters - is that there is a general lack or very poor understanding of the principles of parliamentary privilege and the proceedings of this house. An attempt is made by legal counsel to apply very strict legal interpretations in relation to the proceedings of this house, which are simply not applicable, in itself, creating a lot of the problem we face as a result of those letters.

It is interesting that the letter from Mr McCusker, QC, was written and delivered to the President and tabled in this house before the committee report was tabled in this house. It begs the questions: why; what happened with that timing; what was the intent in delivering that letter; and was the intent to seek to influence the committee in the finalisation of its recommendations to this house, or indeed to improperly influence the independent decision making of members of this house on the report and recommendations? Had Mr McCusker, QC, taken the time to wait until the select committee report had been tabled and then considered the report, he would, I think, not have written his letter in the way he did. It is simply very hard to see the foundation on which he has raised the matters in his letter.

Malcolm McCusker, QC, argues four main issues: one is that the committee has demonstrably acted outside the scope of its terms of reference and is therefore acting contrary to law. In paraphrasing the twenty-second edition of Erskine May at page 633, Mr McCusker states that a select committee has no authority save that which it derives by delegation from the house. It cannot of its own volition, without the authority of the house, deal with issues that do not come within its terms of reference. That is true; Erskine May certainly does say that. What Mr McCusker's letter does not go on to cite is that on that very page, Erskine May also states that the interpretation of the terms of reference or order of reference of a select committee, however, is a matter for the committee. That is an important part of the explanation provided in Erskine May that has been omitted by Mr McCusker.

It is a bit difficult to try to ascertain from his letter exactly which findings and recommendations he has concerns about in terms of the committee having gone outside the scope of its terms of reference. I have sought to categorise the committee's findings and recommendations into five broad categories. The first category is primary unauthorised disclosure by a member of the standing committee. The second category is subsequent unauthorised disclosures by third parties; that is, secondary or tertiary unauthorised disclosures. The third category is false answer findings. The fourth category deals with the general range of procedural recommendations in relation to reviews of procedure, standing orders, penalties and the Parliamentary Privileges Act, and the interaction between the Parliamentary Privileges Act and the Criminal Code. The fifth category is observations, because I think that perhaps Mr McCusker's concerns relate to the strategy observation, which, in the advice to his clients on the preliminary findings of the committee, was drafted as a preliminary finding. However, the committee, in assessing the submissions that were received in response to that, determined to make that an observation rather than a finding.

On the issue of primary unauthorised disclosure by a committee member, clearly there is no issue about the committee having gone outside its terms of reference. That is clearly a term of reference. In relation to the issue of subsequent unauthorised disclosures, there is an issue about whether the committee has the power to make a finding in relation to a secondary or tertiary disclosure and whether any penalty should result. A lot of attention is paid to Erskine May, in particular in a case in which a select committee inquiry found that a journalist had refused to disclose the source of leaked information and the select committee recommended that no further action be taken. The reason that that select committee did not proceed to take any action against the journalist responsible for the secondary disclosure was that it could not identify the primary source of the disclosure. Our select committee was able to identify the primary source of the disclosure and therefore it is appropriate that any further disclosures we identified, being secondary or tertiary disclosures, should also form a contempt of this house. Members will note that the committee did not go on to recommend any penalty for the secondary disclosures, but the committee rightly found that they were a contempt of Parliament. I do not think that Mr McCusker could be expressing a concern about this.

On the issue of false answer findings, I think paragraph 19.43 of the report clearly deals with that matter. It outlines the fact that the committee holds an ancillary power to make findings in relation to any contempts which are committed against the committee's own proceedings and which are obvious on the evidence before the committee. It would be nonsensical to suggest that the committee must report all such clear contempts back to

the house for another select committee of privilege to be established to make findings in relation to those contempts based on the exact same evidence before the committee. I would be surprised if this was a concern outlined by Mr McCusker.

The fourth category related to the procedural recommendations. I cannot see why these would concern Mr McCusker's clients, so I doubt very much that that is likely to be the issue he is concerned about. It is likely that the concern relates to the strategy, which is observation 2. From any reading of the evidence before the committee, it is very clear that both his clients were involved in the strategy to use the standing committee for an improper purpose. I do not understand the basis on which he could suggest that the select committee was operating outside its terms of reference by simply making an observation. No finding was made in relation to that matter. Certainly, the evidence speaks very clearly and plainly for itself.

The second area of concern that was raised by Mr McCusker is the manner in which the select committee has acted, which he suggests gives rise to a reasonable apprehension that it has prejudged a number of issues and that it was not approaching those issues in an impartial and unbiased way. This is a serious allegation against the committee. It alleges that the committee formed a view very early on, and that it was incapable of altering that view regardless of the evidence presented to the committee. This allegation is completely unfounded. The notion of bias on the ground of prejudgement requires that a person hearing a matter must keep an open mind, but an open mind should not be confused with an empty one. Clearly, it is open to the committee to make preliminary assessments along the way, provided that its mind remains open to the assessment of any further evidence or submissions made by the witness. If Mr McCusker had waited until the committee had tabled its report, he would have found that the committee did give due consideration to the submissions by witnesses that it received and, as a result, a number of the committee's findings were reviewed by the committee and appropriately dealt with. I find it hard to understand the basis on which Mr McCusker argues that the committee prejudged any of the issues before it. The third matter that was raised by Mr McCusker is that the committee was acting contrary to standing order 330 and, further, was in breach of the principles of natural justice and fairness. First, the principles of natural justice and fairness are not specifically stated in standing order 330. Furthermore, standing order 330 states "subject to order", which means that the committee, in adopting standing order 330, can adopt as much or as little of it as it likes. It is open to the committee to make those determinations. Members who have read standing order 330 will know that it has a number of paragraphs. I have quite a long spiel about how the committee has complied with each of those paragraphs, but I will not go through it now because I know that time is running on. However, I assure members that the select committee has observed all those aspects of standing order 330. The only aspect about which there is some dispute is that some witnesses have argued in their letters to the President that they were denied access to all the relevant documents, which were the transcripts of other witnesses. Under the standing orders and the custom and usage of this house, it was not open to the select committee, having given private status to all those documents, to then release those documents. In order to do so, the committee would have needed to seek the leave of the house. It was simply not open to the committee. It was not a matter of the committee being deliberately difficult. The committee certainly gave witnesses access to all those documents that it was able to within the standing orders and custom and usage of the house.

The fourth issue that Mr McCusker, QC, raises is his concern about the application of standing order 357. I think I have dealt with that adequately and I do not propose to go back to it. Mr McCusker also raises concerns about the use of counsel assisting. He refers to those sections of Erskine May that deal with specialist assistants. I would argue that that is not an appropriate application of the provision in Erskine May because it deals with advisers or assistants who are assisting a committee with its actual deliberations. That was not the case with the engagement of Mr Philip Urquhart. He was not involved in committee deliberations at all.

There are some other matters I would like to raise that I have an obligation to bring to the attention of the chamber. It is the case that the indignities offered to the house by words spoken or writings published reflecting on its character or proceedings have been constantly punished by both the Lords and Commons - according to Erskine May - upon the principle that such acts tend to obstruct the houses in the performance of their functions by diminishing the respect due to them. It is of concern that a number of letters by legal counsel for the witnesses could arguably fall within that category of contempt. In some instances the letters from legal counsel reveal private deliberations of the committee or refer to private documents before the committee. I think this should be a matter of great concern to the house and it is something that the house should take special consideration of. In particular, Mr McCusker's legal advice in a number of instances breaches both of those provisions and may be a contempt of this house. I have the details and I am happy to provide them to the Clerk or the house or the President, as appropriate, as I do not wish to take up more time of the chamber.

It is also the case that the letter from Mr Grant Donaldson breaches parliamentary privilege in terms of referring to private deliberations and documents of the committee, and also in terms of the reflections it makes upon the

proceedings of the committee and the proceedings of this house. In the case of Mr Donaldson's letter, there is also a question about the suggestions he makes in relation to the Corruption and Crime Commission in which he suggests that he will report the Corruption and Crime Commission to the WA Police and the commonwealth and state Attorneys General. That could arguably amount to threatening behaviour towards a witness because of evidence given by the witness to a parliamentary committee. That is a criminal offence under section 58 of the Criminal Code. This house would need to consider that matter with some care as well. Certainly, as I have indicated, there are issues concerning the release of private deliberations of the committee and private documents of the committee. There is also the issue about some of the letters impugning the dignity of the house and reflecting on the proceedings of the committee and the house. It is arguable that some of the letters are also seeking to improperly influence members of this place in the exercise of their free judgement in relation to the committee report and recommendations. Mr Chairman, I am not sure how one best proceeds with this. I may seek advice from the Clerk separately and then bring the matter before the house on another occasion, as I do not want to take up more time. There are a number of other matters I wanted to deal with but time is getting on and I think it might be best if we try to progress this matter. I may raise the other issues I want to talk about as we deal with the individual clauses of the recommendations and the motion before the house.

Hon LJILJANNA RAVLICH: I rise in support of the motion before us to delete all words after "That" and insert the amendment moved by the Leader of the House. In doing so I state that this is a very difficult matter. I also have to say that at the heart of the matter we are dealing with and have before us today is the integrity of this place. This is about the integrity of the workings of this place. The report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations is a very interesting read.

I say at the outset that this matter centres on one committee of the house looking into the workings of another committee of the house. As it has been open for one committee to find fault with another, it is open in the future for yet another committee to find fault with the committee finding fault in this instance, and so on ad infinitum. Why? Because obviously people will have differing views about evidence presented before them and events that may have occurred and so on. I also note that no matter how objective they are in their deliberations, committees are formed on partisan lines and they reflect the partisan composition of the house. They are therefore not equivalent to the courts and the legal system, from which partisan bias is prohibited. We are dealing with a unique situation.

In supporting the amendment I wish to recapture some of the key points in the chronology of events of the select committee and what it uncovered. The origin of this whole matter is found in 2005 in the dispute between Cazaly Resources Ltd together with Echelon Resources Ltd on one side and Rio Tinto on the other side. Shovelanna was an iron ore deposit near Newman that was originally pegged in the 1970s. Rio Tinto's documentation for the renewal of its lease somehow had not arrived in the Mining Warden's office by the prescribed date, which was 28 August 2005, and therefore Cazaly Resources successfully applied for a lease over what was technically vacant land under the WA Mining Act. The minister at the time, John Bowler, had to rule on the matter. He ruled in favour of Rio Tinto's application to have Cazaly's lease struck out under the Mining Act. Following that, I understand that the ruling was tested in the Supreme Court, which found in the government's favour. Therefore, Minister Bowler's decision was upheld. It was that decision that Cazaly was seeking to overturn. I suspect that what happened from there was that Cazaly may well have been advised of the services of Mr Burke and Mr Grill in this matter. They worked with Mr Crichton-Browne in order to effect a shift, if you like, from the position it was in.

It is quite clear from everything presented in the report that the level of fee that Mr Grill and Mr Burke were due to make was very substantial. A figure of $2 million was mentioned in the report. I have no issue with people making money. In some sense the market determines how much money a person does make from success fees and a whole range of considerations. However, the heart of this is how people make money. It is about their integrity or, sometimes, their lack of integrity. Therefore, it seems apparent to me that some of the $2 million was based on share options. There were some share options. However, it is not clear from the report how much was going to be a success fee as opposed to shares options. However, at the heart of all this was the plan that was devised about how the share price could be influenced by using the Standing Committee on Estimates and Financial Operations in bringing pressure to bear so that there could be some change in the outcomes.

The select committee's inquiries reveal that the financial interests of other parties were involved in these matters, but the key figures at the centre of this whole issue were Mr Burke, Mr Grill and Mr Crichton-Browne. It is most important for the house to note that as a result of the select committee's inquiries, two members of this house were found by the select committee to have committed breaches of privilege and contempts, but there is no suggestion that they were in any way going to gain, financially or otherwise. They were, in my view, manipulated and used by Mr Burke, Mr Grill and Mr Crichton-Browne. It is made clear throughout the report that there had been consistent manipulation. It is quite clear that all three, Mr Burke, Mr Grill and Mr Crichton-

Browne, did not reveal to those two members of this house the extent to which they would profit from this matter.

As I was coming into work the other day, I heard Hon Anthony Fels speaking on the radio. He made the point that he thought it was okay to accept some terms of reference, because Mr Crichton-Browne had told him that those terms of reference were in fact drafted by the parliamentary inspector. That is certainly what I heard on the radio, and that is a separate issue. However, I am sure that nobody had told Hon Anthony Fels or Hon Shelley Archer how much was to be gained financially. Rather, the tactic that was used by Mr Burke, Mr Grill and Mr Crichton-Browne with Hon Anthony Fels and Hon Shelley Archer was that this was all about presenting the interests of the little guy as opposed to the interests of the big guy; in other words, the big multinational company Rio Tinto.

I refer to page 444 of the select committee report and to a telephone call on 15 August 2006. Mr Burke called Ms Archer and said -

> *Shelley, uhm you know that committee that was set up in the upper house that you got on, do you remember, what was that called?*

Hon Shelley Archer said -

> *The Financial and Estimates Committee.*

Mr Brian Burke advised -

> *Uhm, I'm looking for a committee or a vehicle that can look at one particular aspect of the resources industry in the state, uhm, you know how these big companies get in and they tie up these areas of land for twenty or thirty years and . . . no one can explore them.*

The theme for Mr Burke, Mr Gill and Mr Crichton-Browne was that multinational resource companies were acting against the interests of small local companies, and therefore they were slowing down the development of Western Australia. In manipulating the two members into establishing an inquiry and terms of reference, Mr Burke said in a telephone conversation on 6 September 2006, according to the report -

> *"Essentially what it is, is this, it's an enquiry into, under the terms of the Financial Administration of the State, all of the areas that the big majors have got tied up and sterlilized on which they haven't worked say for twenty thirty years. . . . And there's just a lot of smaller miners who come to me and Julian, no one in particular who say well look while this is tied up no one gets any benefit from it, . . . and year after year they apply for exemptions from the work commitments."*

The CHAIRMAN: I give the call to the Minister for Local Government.

Hon LJILJANNA RAVLICH: It is clear that Mr Burke, Mr Grill and Mr Crichton-Browne presented the need for an iron ore inquiry as being good public policy and good politics - in the best interests of the state. They did not reveal their objectives; they did not reveal personal gain or promise any member any personal gain. It is also clear from the report that in fact they were quite contemptuous of the abilities of the two members concerned. They drew them into their manipulations and abused the trust that those members placed in them by presenting themselves as their mentors. I believe that they used those members. They sought also to draw in other members by involving Mr Chapple and exploiting that link. Through Mr Crichton-Browne's connections, there was a concept of drawing in a broader range of members. Mr Burke sent an email to Mr Edel on 13 September 2006, and cc'd a range of other people, with Hon Shelley Archer's emailed advice of 13 September 2006, although he does not specifically name her as the source of the advice, on amending the draft terms of reference to fit within the committee's terms of reference. He suggested that Noel Crichton-Browne should approach Hon George Cash, MLC, and Hon Norman Moore, MLC, to ensure that the Liberal Party members on the committee supported an iron ore inquiry. I am not alleging that Hon George Cash and Hon Norman Moore did anything wrong. Indeed, there is no evidence of that. The bottom line is that I am just making the point that other people were being manipulated. The three people concerned - that is, Mr Brian Burke, Mr Julian Grill and Mr Crichton-Browne - certainly tried to bring in other people so that they could effect the outcome. In a file note of 10 October 2006 from a meeting at Phillips Fox, there is evidence of a conversation with Noel Crichton-Browne about why the Standing Committee on Public Administration was not chosen for the proposed iron ore inquiry and discussion of the draft terms of reference and historical aspects of the policy. There was also a reference to Hon Norman Moore and that Noel Crichton-Browne was to phone him.

Hon Norman Moore: Let me assure you he didn't. You're just chucking a bit of mud around in the hope that some will stick.

Hon LJILJANNA RAVLICH: I am not trying to chuck any mud; I am trying to be -

Hon Norman Moore: Would you like to read the bit about Mr Travers and the bit about Giz Watson and the bit about -

Hon LJILJANNA RAVLICH: There are references to many people in this report. At the end of the day, there is no doubt that a part of the way in which Mr Burke, Mr Grill and Mr Crichton-Browne operated was to try to get as many people as they could into their web. The simple fact is that the two members of this place who are the subject of the amendment proposed have compounded their own sets of circumstances, because they have been found by the select committee to have committed breaches of privilege and contempts of a serious nature. In support of this amendment, I am of the view that the influence of Mr Burke, Mr Grill and Mr Crichton-Browne should cease once and for all. It will protect public life in the state from exploitation for private gain by those unscrupulous enough to use other people while presenting their own position as being that of serving the public good. I am also of the view that the Premier is acting in the best interests of Western Australia in wanting to get rid of the influence of Mr Burke, Mr Grill and Mr Crichton-Browne. The truth is that Mr Burke, Mr Grill and Mr Crichton-Browne have acted in financial self-interest. The truth is that they have scant regard about who they hurt in the process of achieving their desired outcomes. The truth is that many have fallen because of their association with Mr Burke and Mr Grill. The truth is that good people do not use, exploit and deceive others intentionally in pursuit of their own financial interests. They do not manipulate long-standing institutions like the Parliament, and they do not corrupt the process of democratic decision making.

Point of Order

Hon KIM CHANCE: Before you put the question, Mr Chairman, I seek your advice. On Tuesday, the Deputy Chairman, Hon Ken Travers, in relation to a question on whether a person who is implicated in a question before the house has the right to vote, indicated that the right did exist. I ask whether further consideration of that advice has taken place in the time since the advice was given. I ask in reference to two particular areas. The first relates to whether there is a later reference in Erskine May's *Parliamentary Practice* to this question on disciplinary matters. Although it is not strictly relevant, I also ask a question in relation to standing order 326B, which reads -

> In relation to any matter or inquiry before a committee, -

Although this is the Committee of the Whole, that is not the intention of the word, and that is why it is not strictly relevant -

> a Member shall not vote on a question in which the Member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.

Although I concede that standing order 326B is not relevant to the question I have asked, I raise a matter in general terms as to whether, considering that rule in the standing orders in relation to a committee, that same thread does not carry into the Committee of the Whole, or the Parliament itself. Primarily, my question relates to Erskine May's advice about a member who is facing a disciplinary charge.

The CHAIRMAN: The Leader of the House has raised a number of issues on which I believe he is seeking advice. He has asked me whether further consideration was given to the Deputy Chairman's earlier decision and ruling on the question of a personal interest that was raised the other day. He has also referred in particular to standing order 326B and other issues. I certainly have given no further consideration or taken any further advice on the matter. If the Leader of the House or any other member had wished to disagree with the ruling of the Deputy Chairman, the appropriate time to disagree was when the ruling was first given. I will not be able to deal with all the issues raised by the Leader of the House at this stage. He asked in particular whether there was a later reference in Erskine May. I am advised that at page 148 of the twenty-second edition of Erskine May's *Parliamentary Practice* there is a reference that reads, in part -

> Though the older practice of the House was to require the withdrawal of the Member under criticism as soon as he had been heard, the practice was not invariable and the House exercises its discretion according to the circumstances.

I think that may be the later reference on which the Leader of the House was inviting comment, and I acknowledge that it exists. Further, I make the observation that I have been provided with some further advice that indicates that when this matter has arisen in both this chamber and the other place on previous occasions, the member has been given the opportunity to speak and has been said to be entitled to vote on the issue. However, because the Leader of the House has raised this matter without notice, as is his right, and because I believe that it happens to be a serious matter, it would be appropriate if I left the chair and consulted the President on the matter to establish whether the President wishes to make further comment or to direct me, as Chairman of Committees, to make further comments. I propose to leave the chair until the ringing of the bells.

Sitting suspended from 3.17 to 3.26 pm

Ruling by Chairman

The CHAIRMAN (Hon George Cash): Members, I refer to the issues raised by the Leader of the House, and indicate that I have consulted the President. I uphold the original ruling provided on Tuesday, 27 November, as the additional information to which I alluded at page 148 of Erskine May's *Parliamentary Practice*, twenty-second edition, does not alter the procedures and practice of this house.

As I stated earlier, there are precedents in both this place and the other place of a member, the subject of a contempt motion, having been entitled, and indeed having exercised that right, to vote on the motion. Standing order 326B has no relevance to the Committee of the Whole House, as it relates to a standing committee.

I indicate to members that, in future, if members disagree with the ruling from the Chair, they are required to make immediate objection. I refer members to standing order 289 in that regard.

Amendment to Motion Resumed

Amendment (deletion of words) put and a division taken with the following result -

Ayes (15)

Hon Matt Benson-Lidholm	Hon Sue Ellery	Hon Paul Llewellyn	Hon Ken Travers
Hon Vincent Catania	Hon Adele Farina	Hon Sheila Mills	Hon Giz Watson
Hon Kim Chance	Hon Jon Ford	Hon Ljiljanna Ravlich	Hon Ed Dermer *(Teller)*
Hon Kate Doust	Hon Graham Giffard	Hon Sally Talbot	

Noes (16)

Hon Shelley Archer	Hon Murray Criddle	Hon Ray Halligan	Hon Helen Morton
Hon Ken Baston	Hon Brian Ellis	Hon Barry House	Hon Simon O'Brien
Hon George Cash	Hon Anthony Fels	Hon Robyn McSweeney	Hon Barbara Scott
Hon Peter Collier	Hon Nigel Hallett	Hon Norman Moore	Hon Bruce Donaldson *(Teller)*

Pair

Hon Batong Vu Pham	Hon Donna Faragher

Amendment thus negatived.

Motion Resumed

Hon NORMAN MOORE: The decision just made by the chamber is to not delete the words as proposed by the Leader of the House to enable him to move other words to be inserted, which means the chamber is now back to a consideration of the original motion moved by Hon Murray Criddle. My view is that the Committee of the Whole House should now concern itself with the recommendations of the report. We have just spent the past two-and-a-half days arguing about general issues, brought on mainly by the nature of this particular debate and also by the fact that the government wanted to introduce issues other than the recommendations of the report; namely, the expulsion of two members. I do not know whether the government interprets the vote that we have just had as being a vote on expulsion. It may choose another amendment to do that. However, my understanding of the way in which the chamber believes expulsion should proceed is that the chamber does not support it; indeed, had the Greens (WA) not changed their view on this matter, we could add another two members to those who voted to not delete the words. We have dealt with that issue in my view, albeit we have not had a vote on it.

I am of the opinion that the time has now come for this chamber to start at recommendation 1 and work its way through to recommendation 35 and make some decisions on the issues raised by the report, because basically what we have done for the past two-and-a-half days is talk about what Mr Carpenter wanted us to talk about. I now want to talk about the matters the committee wants us to talk about, which are the alleged offences that people may have committed and the whole stack of very worthwhile and positive recommendations. I was intending to move an amendment when this matter first began on Tuesday but I was beaten to the call by the Leader of the House. I apologise to the then Deputy Chairman for my unfortunate comment on his decision. I acknowledge that what he did was right. However, because I did not get the first shot at it, my amendment did

not get a chance to be considered and so we spent the past two and a half days dealing with the amendment moved by the Leader of the House.

We have had a very good debate in my view; in fact, it has been one of the better debates I have witnessed in this house, and on an issue that could have caused people to be throwing things at each other. Apart from the Minister for Local Government trying to have a quick go at me and Hon George Cash on the way out today, no recrimination has been made against individuals. That has been a good thing because we have been able to debate the issues rather than the personalities. In my view, that is a debate that we had to have. Indeed, I want to thank Hon Adele Farina. I might add that if ever I need a lawyer, I will see whether she is free.

Hon Ken Travers: You will need a lot of money.

Hon NORMAN MOORE: I agree, certainly with the sort of money I have. However, I have worked out some ways to get some more! People who make defamatory remarks from time to time have to pay. Members should understand that, and they do. However, that is for another day and another time.

Hon Adele Farina has gone through most of the concerns raised by eminent lawyers. The amendment I had intended to move was to refer those letters to the Standing Committee on Procedure and Privileges for its consideration ahead of this chamber making a judgement on the individuals involved. However, I was very happy to agree to every other recommendation in the report, with some amendments to satisfy some difficulties that have been discovered. I felt that the proper process for the chamber to go through would have been to give the standing committee a chance to look at the concerns raised by the lawyers. If there were no concerns from its point of view, we could then proceed to make a decision about the offences of the individuals and the penalties. If, on the other hand, the standing committee found some credibility attached to some of the lawyers' letters, the house might take a different point of view on the issues relating to individuals. I likened that the other day to an appeal before the event rather than an appeal after the event.

Hon Adele Farina, for our benefit, has gone through her opinion on those issues raised by various lawyers. I would at some time love to see her and Malcolm McCusker arguing the matter. The problem that Malcolm McCusker has today, of course, is that he is not a member of this place, so he must accept that he will not get a chance to argue with Hon Adele Farina about his letter and her interpretation of it. That is a debate I would love to see sometime, so maybe someone would like to organise it, and we can all come and watch. He charges a lot more than Hon Adele Farina does! If she can beat him in debate, she will be very much in demand as a legal advocate in the future.

I had contemplated that if the Committee of the Whole were to vote in the way it did on the motion we have just debated - in other words, if it did not agree to delete the words - and we were to return to the original motion, I would move an amendment I have drafted to the original motion that would put in train the process I have described; that is, to send the letters to the standing committee. Having listened to the debate and the contribution from Hon Adele Farina, I am now of the view that the chamber ought to forget about amendments to the motion such as that moved by the Leader of the House, and we should just get on with dealing with the recommendations. If, however, we are confronted with another set of amendments from the government to force a vote on expulsion, the Greens (WA) move an amendment to force a vote on suspension, and the government moves another amendment with regard to referring matters to the Director of Public Prosecutions and other agencies for whatever purpose, we will be here for the next six months. It would be helpful if I had some indication from the government - perhaps by way of unruly interjection - whether it intends to do that. On the other hand, we could say, "We have had a debate on the extraneous issues and the chamber has basically said that it would not go down that path; let's just get on with the recommendations." If the government can indicate to me that that is what it is prepared to do, I will sit down and shut up, and we can start doing that; otherwise, I will have a fair bit more to say.

Hon Kim Chance: It is the case that the government intends to move another amendment which contains all of the clauses of our first amendment.

Hon NORMAN MOORE: I have been regularly, consistently and constantly criticised by the Premier for supposedly delaying the processes of judgement because I am trying to protect people - people whom he describes as corrupt, disgraceful, scum-of-the-earth type people - and thereby am trying to delay the processes of the Legislative Council. I have put to the house a way forward whereby, on the basis of what I think about these recommendations, this process could be finished by five o'clock this afternoon. There is no doubt in my mind what should be done about the recommendations. As far as I am concerned, I will support the recommendation that all the members and non-members who have been found by the select committee to have revealed committee information should apologise to the house. I will support the recommendation for the non-members involved to write a letter of apology. I also support the proposition that action on recommendations relating to apologies for giving false evidence should be deferred until such time as the Director of Public Prosecutions has

examined the question of guilt or otherwise with regard to section 57 of the Criminal Code. I will agree to the referral of all these issues to the DPP. I am happy to accept an amendment to those motions that the issues be referred to the DPP rather than the Attorney General. The committee has not told us why recommendation 5 seeks to refer to the Attorney General matters relating to giving false evidence pursuant to section 15 of the Parliamentary Privileges Act, when we have been told that that is not an appropriate recommendation.

Hon Kim Chance: My amendment addresses that.

Hon NORMAN MOORE: I understand that, but the leader's amendment goes well beyond that. His amendment deals with all sorts of other things, such as making the evidence available to a range of people other than the Director of Public Prosecutions. It refers to section 57 or any other provision of the Criminal Code. The leader may well have a very good reason for that, but we have not yet heard one. He did not actually argue all his case when he spoke earlier. However, he argued the Premier's line that we should expel somebody.

I indicate to the chamber that, apart from a couple of minor amendments, I do not have a problem with proceeding with the recommendations. That is not an altogether unfair proposition. If the leader decided to desist from his course of action, we could actually finish this today.

The CHAIRMAN: Order, Leader of the Opposition! I have to leave the chair. The Leader of the Opposition has indicated that it is his intention to move an amendment. If it is convenient to the chamber for the Leader of the Opposition to move the amendment before I leave the chair, it will give members an opportunity to consider it before we return to this matter after question time. That is the Leader of the Opposition's option. I thought the Leader of the Opposition might want to put it on the table as a matter of convenience.

Hon NORMAN MOORE: Rather than move it now, I will defer doing so until the chamber resumes, in the hope that commonsense might prevail in the meantime.

Committee interrupted, pursuant to standing orders.

[Continued on page 8018.]

Sitting suspended from 3.45 to 4.00 pm