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

Committee

Resumed from 27 November. The Deputy Chairman of Committees (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 ANTHONY FELS: I thank members for their indulgence in allowing me to respond to the claims and comments of the government, through Hon Kim Chance, Leader of the House.

I refer members to page 41 of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations report, specifically the recommendation at the fifth bullet point, which states -

> . . . the Committee rejected expulsion, as that is a penalty that should be reserved for only the most serious contempt by Members;

This issue of expulsion and potential penalty was obviously very extensively and clearly addressed by the committee after it had considered all of the evidence and findings. The committee made very clear in its report that, based on the severity of its findings, it specifically rejected - not just recommended against - the expulsion of any member. It found that expulsion should be reserved for only the most serious contempt by members. Other members of Parliament, not necessarily in this house, and most recently Hon John Bowler, have had findings made against them in the other place about having leaked a draft committee report. I regard that as one of the most serious types of breach of privilege and contempt of Parliament that could occur. Maybe there are worse contempts than that, but the leaking of a draft report is certainly very serious, yet the penalty imposed on Hon John Bowler was a six-week suspension from Parliament on full pay, which is not as serious as being expelled from Parliament. Most members would agree that his involvement in leaking a draft report, the way it was done, the intent with which it was done, and the ramifications of doing it, were far more serious than any contempt that came before this committee. I am outraged that the Premier, who is the leader of the state government and the leader of the party of which Hon John Bowler is a member and a former minister, has pursued this process of trying to get the Legislative Council to expel two members after the Legislative Council's committee quite deliberately and quite clearly looked into the issue of expulsion and made the strongest recommendation to reject the expulsion of any member and to reserve that penalty for the most serious offence, as should be the case.

This is a sad day for Parliament because the Premier of this state and government members in this house have totally disregarded due and proper process in denying members a fair hearing of the issues involved in this matter. The way this issue has progressed is simply unfair, not only through the government's proposal to pretty well doctor the entire report and not even consider the report, but also through the amendment moved by Hon Kim Chance to the motion to move straight to quite serious findings and orders of this house that really bear no resemblance to the committee's findings and its intended penalties.

I believe that at all times I have acted properly and in good faith, and have respected the role of the committee system as part of the Legislative Council's functions and roles within the Parliament, including the committee of inquiry into the potential breach of privilege. I explained this to the inquiry, and I refer members to the findings in the committee's report at page 263 at notes 11.48 to 11.51, which comment on the evidence I provided to the committee and my cooperation with that committee. I believe that I have at all times acted honestly and been respectful of the processes of Parliament, and the rules and standing orders of this house. I believe that my behaviour in this place shows clearly that I have always acted and intended to act properly.

I also seek to give members some explanation of how I became involved in this issue and was ultimately named in some of the findings in this report. What was uncovered in this inquiry goes way beyond what was ever expected or intended, I believe, from the referral motion to establish the inquiry. It really is an illustration of the power of the Legislative Council committee system and what it can do, and the effectiveness of the committee system in examining an issue. The committee system is a most worthwhile function, and any member of the public can approach members of Parliament to commence an inquiry into any issue if the majority of that committee's members decide that such an inquiry is worthwhile. Brian Burke obviously recognised this. It is very important that any members who have not read this report do so, because it is a great illustration of a committee's ability to get things done in this state on behalf of the Parliament. Probably not many people would understand how a committee does some of these things, but Brian Burke obviously did. It is for other members to have their own view, but this report relates to a scandal in which I had no involvement in what Brian Burke was proposing to do. The report really highlights the effectiveness of a committee to do things and it is a shame that more ordinary people, citizens of the state, cannot have more of their issues raised by themselves by going through their ordinary members of Parliament. Although it will not necessarily happen, it is always open to any member of the public to use the committee system to pursue any outcome that he or she desires.

Brian Burke alone was not involved in this. There was a case on foot before the Supreme Court involving Cazaly Resources. I will not go into the issue of how that affected the Supreme Court claims and the case before it, but there were legal and other advisers to that company involved in this process. At the end of the day, what those other people did may not even be found to be illegal, but it is certainly open for anyone to have an inquiry.

I am very disappointed that the Premier of Western Australia has used the opportunity, following the publication of the report of the committee, to basically manipulate and pre-empt the due processes of the Parliament by calling for the expulsion of Hon Shelley Archer and me, totally disregarding the committee's recommendations. The Premier has drawn his own conclusions from the report primarily for a political purpose.

I do not stand here today defending Brian Burke or Hon Shelley Archer, or the directors of Cazaly Resources or Echelon, or the partners of Phillips Fox, or anyone else involved in the inquiry - I believe 10 witnesses had findings made against them. That is not my purpose. I merely object to the way the government is proposing to

treat the report to basically seize on an opportunity to sort out its own internal problems within the Labor Party by using the powers ultimately available to the Parliament. Those powers should certainly not be used in the way they are being used.

The committee report demonstrates that my involvement in this scandal and this issue was really an innocent involvement and that I was unwittingly dragged into the issue on the basis that I supported the potential inquiry by the committee into the iron ore policy of the state.

Sitting suspended from 6.00 to 7.30 pm

Hon ANTHONY FELS: Before we broke for dinner I was explaining how the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations demonstrates that my involvement was really innocent and that I was unwittingly dragged into the factional Labor Party infighting over its issue with Hon Shelley Archer and its difficulty with the numbers and its control in this place. I want to acknowledge the work done by the committee into this potential breach of privilege, to thank the members of the committee for the inquiry and report and to respectfully request that they and other members of this place remain open to reviewing some of its findings, particularly those made against me.

It first came to the attention of the Standing Committee on Estimates and Financial Operations early in November last year that there was a potential breach of privilege from within the committee. It was drawn to the committee's attention in a letter from the Association of Mining and Exploration Companies indicating that it understood that an inquiry was underway and that it wished to suggest issues that the committee may wish to look into. At that meeting the committee became aware that some information had been released that had not been authorised by the committee. I recall that I had no problem with the matter being reported to the house at that time. In hindsight, I wish it had been because if it had, we would not be dealing with the serious issues that have arisen from this inquiry and the process as it has developed. At that time and at all times I was of the belief that I had not disclosed any of the committee's deliberations or anything that could be considered to be confidential proceedings of the committee. In fact, I have never spoken to AMEC. I was as surprised as anyone that AMEC had contacted the committee. I also submit that, if a serious breach of confidentiality or a breach of privilege occurs, the usual process is for the committee, through the chairman, to report the matter to the house. In this case - this is probably the other committee members' views - I guess what members at the time considered was confidential and important certainly did not transpire into the chairman reporting anything to the house. That was certainly not through any intervention or opposition by me. I would go as far as to say that, at the time, the estimates and financial operations committee did not consider this to be a disclosure of the committee's deliberations. I say that because the matter had been raised by me as one that I thought the committee should have looked into in the subsequent year. The committee had gone no further than to ask me to provide more information at a future time, including terms of reference and information about the issue. A question was not even put to the meeting that we resolve to undertake an inquiry into the issue. I note from the report that subsequent meetings were analysed and reference was made to Hon Ken Travers making inquiries of the minister's office. I understand that when the committee went back to the earlier meetings, in fact no documentation had been prepared or any authorisation given to Ken Travers to do that. It appears to me from the evidence of other witnesses mentioned in the committee report that no clear authorisation was given by the committee - it was certainly not documented in the minutes - for Hon Ken Travers to go ahead and do that. I am not suggesting that there was anything improper with him doing that. It really reflects at what stage this issue was at in the committee, and what members would normally consider to be confidential issues before a committee. It was a general issue that had been raised, and it had not gone any further than that. It was that issue that was subsequently raised in the Corruption and Crime Commission in February this year. It was only after that that the matter was formally brought before this place. This procedure and privileges committee inquiry was established at that time, and that was four months after the initial issue had been raised.

I refer members to paragraph 11.47 on page 263 of the procedure and privileges committee's report. It is confirmed by Dr Justin Walawski from AMEC how he came to the view that the committee may have been making some inquiry into the mining issue. It is very clear from his evidence and, I think, the findings of the report that it arose from the disclosures of Hon Shelley Archer. I am not saying that they were committee deliberations in any case; but they had nothing to do with any involvement of mine.

On the issue of the evidence I provided to the procedure and privileges committee of inquiry, I at all times was more than happy to give my account of events as I saw them. I was a willing witness. I did not go to the cost or extent of employing legal counsel to represent me. I did not at any time think I was in any trouble until the committee's findings were provided to me. I provided my recollection of events to the best of my knowledge without wanting to hide anything or resorting to saying, "I can't recall," as is often the case when witnesses do not want to give an answer. I gave the answer as I saw it and as I believed it to be. I note from findings in the

report that several other witnesses employed Queen's Counsel, Senior Counsel and senior barristers from around Perth. As both the report and correspondence that has been laid before the house has shown, significant legal issues have been raised by greater legal minds than mine about due process and everything involved in this matter. I certainly did not wish to use any of those arguments to change anything in the report that relates to me. That is a totally separate issue. I never sought to object to any of those types of issues when I was asked to provide evidence. I simply wish to defend myself against the findings that were handed down about me on the basis that, at all times - including when I provided answers to the committee - I acted honestly and appropriately. I am most disappointed that the committee found that I gave false evidence. I respectfully dispute that finding. I request and urge members of this chamber to consider whether the information that I disclosed is a disclosure and to look at the proper functioning of a committee. I cannot agree with the select committee's definition of "deliberation" and how it has been interpreted for the purposes of this inquiry. I believe that I intended to act properly at all times and that I was respectful of the functions and integrity of the estimates and financial operations committee.

One of the most useful things to come out of the inquiry - apart from the findings against members, other witnesses and notable people around the state - was the issue of members' understanding of issues relating to contempt, privilege, confidentiality, contempt of Parliament and the processes and functioning of committees. At no time have I tried to hide behind the fact that I am a new or inexperienced member. I have gained a lot of knowledge from going through this inquiry. I seek leave to further my comments.

Without wishing to divulge information that was secret to the committee - it is relevant because it is important to this chamber - when I was inducted in May 2005, before I was sworn in as a member of Parliament, I was provided with a questionnaire to assess the information that we had been provided with. The questionnaire asked us to state how important that information was, and was provided after Mia Betjeman had given a presentation to newly elected members. In the part that asked for further comments, I stated that the sessions covered a lot of information quickly and that I would probably gain more from attending them again so that I could cover everything that I had missed. I am not using that as a defence for not knowing about breaches of privilege. Earlier this year I visited Westminster as a Commonwealth Parliamentary Association delegate. I was invited to attend by the United Kingdom branch of the CPA. Further issues were covered at that conference. The issues raised in this inquiry have indicated that a number of members - not just new members - are a little confused about the definition of "deliberations" when we are talking about the proceedings of a committee; about whether they can tell someone that they have an issue that they want to put on the agenda at the next committee meeting; and whether it is a breach if electorate office staff see a fax that is sent to a member of Parliament by a committee. Members must have an understanding of those issues.

In his speech last night, Hon George Cash referred to the education of members. Education is an important issue. The Clerks and other parliamentary staff must consider further educating members of Parliament about these issues. I note that the Corruption and Crime Commission has a program that is specifically designed to educate public servants and other state officials about corruption, anti-corruption and their obligations. I am not aware of the CCC having ever given such a presentation to any member of Parliament. I have certainly not attended one. I have never had any contact from the CCC, which I am pleased to report. I hope I never have any contact with the CCC, other than to help it with an inquiry that is not about me. Education is an important function of the CCC and it should not be limited to the public servants of the state; it should be extended to members of Parliament.

When I was asked questions about this matter, it was my understanding that "deliberations" referred to when a committee commences an inquiry or when it is deliberating on a question or issue. The only reference that I can find to "deliberations" in the standing orders is standing order 332, which deals with deliberations in a draft report. I suggested that the estimates and financial operations committee inquire into the state's iron ore policy and how it affects the royalties and income of the state. It was my intention that the committee commence that inquiry because it was an issue of significant public importance and because it was the biggest economic issue in the state, given the mining boom and how that is affecting the economy and the collection of royalties.

I view the committee's findings very seriously. However, with a clear head and a clear heart, I know that I acted properly at all times. Members can see that over a period of about four months I still had not put the question to the committee that it commence that inquiry. If I was gung-ho about getting the inquiry underway because of a particular person, I could have done so earlier, because it is clear from the evidence that Hon Shelley Archer supported the inquiry early on. Without knowing Hon Nigel Hallett's view, I would have thought that if an issue amounted to an attack on the government, committee members would vote according to their political allegiance. If I were asked how members of any given committee would vote, I would say that government members would support the government's position, opposition members would normally be happy to raise an issue that might

question the government and the Greens (WA), if they had the casting vote, would be directed by what suited their party policy.

On the two occasions this year on which I gave evidence to the inquiry, I was not represented by legal counsel. At that first hearing in April the chairman of the committee did all the questioning. After a long break - I had no idea what was going on during that break or what the committee had discovered from questioning me and other witnesses - the inquiry held further hearings in September. By then the committee had employed counsel Phil Urquhart, who was an investigating lawyer at Corruption and Crime Commission hearings that were held earlier in the year. I had never met him before and I did not have any issue with the fact that he was conducting the questioning. I attended the committee unrepresented and went up against a man who was well experienced and familiar with the issues. Committee members have stated in the report that I answered the questions to the best of my ability. I did not try to evade any question or reply to a question with "I don't recall". I pretty well gave the answers as I thought them to be. I did not go in there with the thought that I had ever done anything wrong, knowing by then what had been raised by the Corruption and Crime Commission in its hearings earlier in the year.

Members who have read the report will note that some of the other witnesses were less than cooperative. The report also makes for very interesting reading. Members can see just how some of the other witnesses reacted, particularly concerning the significant legal issues that were raised before the committee and letters that have been written to the President. I would like to remind members that I did not partake in any of those issues in any way to try to stall the committee's process. It is also disclosed in the committee's report that one of the reasons for the select committee engaging Philip Urquhart was that some of the witnesses at the earlier hearings in April that year had frustrated or delayed a lot of the proceedings through legal argument. It was one of the reasons the committee wanted to have Philip Urquhart ask the questions at subsequent meetings. All I can say is that that might well be the case, but it certainly was not necessary to engage him to ask me questions because I had not made any objections on that basis.

Each finding of false evidence against me is in relation to my understanding versus the committee's understanding of the meaning of the word "deliberation". I do not think that there is anything wrong with what I understood "deliberation" to be - certainly, not after having discussed with a number of members from both sides of the chamber, as a result of this inquiry, how far the definition of "deliberation" goes and the fact that there is nothing written in standing orders about what can be disclosed from a committee. It really comes down to what members feel they can and cannot talk about when they understand an issue to be confidential to a committee and how they act in regard to that.

The committee's definition may well be worth supporting. I will be more than happy to seek leave for an extension of time. I would be more than happy to support recommendation 23 of the committee's findings, which is to incorporate a proper definition into the standing orders of the house or to recommend that the Standing Committee on Procedure and Privileges at least look into that. That would be for the benefit of future members. It is up to the chamber to decide on that, but I do not have any problem with it. However, I cannot agree that there has been a breach of a rule that, at this stage, is not written. There was no real written rule in relation to this. I say that in referring to the issue that was before the Standing Committee on Estimates and Financial Operations - in fact, I would not go so far as to say that it was before the committee. No question was put to the committee that it should commence an inquiry. All the discussions that I had outside the committee were about issues that had been raised with me outside the committee. That included issues - it is mentioned in the report - that we had had a committee Christmas lunch in December that year, which I think was the day before a meeting, and there was some discussion about members' views on the issue and other issues at the lunch. First of all, I do not think that should be classified as a deliberation of a committee. If members are having, for example, a Christmas lunch or a committee lunch in some informal capacity, either they should not discuss anything that is before a committee or to be discussed by a committee or, if they do, they should keep minutes of the meeting or certainly express that nothing should be divulged.

There are other issues, and Hon Ken Travers would also recall this. I quite often walk down to the committee office or back to the house after a committee meeting with members. I particularly recall having done that with Hon Ken Travers after I first raised this issue, and we had discussed several matters. I always believed them to be informal talks about the issue and about whether I or he should contact Hon John Bowler or any other government agencies or ministers. There would be nothing improper in doing such a thing. For public knowledge, any member would be entitled to do that. It all comes back to how far the committee formally got to in deciding to commence an inquiry. The issue was raised about whether Hon Ken Travers actually had authority to talk to others. That was not disclosed in the earlier minutes of the standing committee.

Another issue to do with the hearings of the select committee is that all the evidence was provided in secret. I did not have a problem with doing that; I certainly do not have a problem if any of my evidence is made public,

but there are reasons these are held before the committee in private. One issue - I think it is important for the fairness of the whole process - is cross-examination and a witness's awareness of any statements or issues that might be raised by other witnesses; for example, if I raised something, that evidence could be tested against another witness, and any claim by another witness could be tested against me. I was not aware of any issue that was raised with me that was testing the evidence of any other witness.

I ask members to look at the alleged disclosures made by me in the context of what they understand the term "deliberation" to mean, certainly in relation to the deliberations of a committee. It is important also to look at the evidence to the select committee, which is mentioned in the report, from the chairman of the Standing Committee on Estimates and Financial Operations, Hon Giz Watson, on the confidentiality of committee decisions and when she thought discussions within a committee became confidential. Her evidence is on pages 352 and 353. At paragraph 16.8 the following is stated by Hon Giz Watson -

> *. . . at some point if we did decide to take it on, we would establish some firm terms of reference and then in my view it would then be a formal business of the committee at which point it would become confidential."*

I want members to note that we never commenced an inquiry even after all these alleged disclosures of deliberations and whatever. We never commenced an inquiry or even considered a motion in the committee to commence an inquiry. Therefore, we were only ever discussing an issue very loosely and very informally. As I said before, the minutes of that meeting did not go into any detail about who was authorised to do anything after that, but it was understood that Hon Ken Travers was to inquire about some information through Hon John Bowler and others. The committee staff and the committee at subsequent meetings never moved to amend those minutes in relation to that and what authorisation had been provided. It was hardly a burning issue before the committee that required confidentiality, nor had it got to any stage at which the functioning of the committee might have been affected in any way.

At paragraph 16.9, Hon Giz Watson's evidence about when deliberations became confidential were stated as follows -

> *. . . I believe that the point of which an enquiry becomes formal committee business ...* [i]*s when those terms of reference are decided and we and the ... committee take a clear decision to take on that enquiry.*

Further on she says -

> *. . . I don't consider that those conversations have been confidential because the committee hasn't made a formal decision to make it part of its ... work."*

Those comments are at page 353. I state that that is probably a similar view to that which I took, and it is probably the view of most of the members here tonight. In relation to an inquiry, it really comes down to the members' view of how important it is and how far the committee has got in talking about an issue.

On the amendment of Hon Kim Chance, I would just like to state again that members really have to oppose this simply on the basis that the committee has done work on this for over six to seven months - obviously a lot of work - and has reached the finding at page 41 that it rejected any issue of expulsion and that that should be reserved for far more serious events. The issue has become very political and very controversial. The matter was raised 10 days before the federal election, so I think that a lot of the publicity over this issue was as a result of considering how it might affect that election, given that it is a committee of members from all sides of the chamber. However, for Alan Carpenter to think that he can seduce members of the Liberal Party, his own party, the Greens (WA) and the Nationals and Independent members by his simplistic and contrived argument that Shelley Archer and I should be expelled is really a dangerous issue to play, when this chamber has all the powers, has dealt with this through the select committee and has the ability to determine the issue for itself, and certainly not for any political reason. It is not for the Parliament and it is not for the Legislative Council to play out the internal politics that are going on within the Labor Party at the moment over different power struggles.

I will make some comments on the President's rulings, which were quite unprecedented, certainly for me in the time that I have been a member of this place. I acknowledge that it is really improper for the Assembly to dictate to the Legislative Council what it should and should not do. It is an attempt to pressure and influence this chamber to expel two members of Parliament. I really believe that the whole purpose of Alan Carpenter's involvement in this is to ensure that he has the controlling numbers again in this place to be able to put through legislation that is controversial. I am pleased that Hon Shelley Archer, now that she is no longer a member of the Labor Party, has the opportunity to vote on issues according to her conscience. I would not expect that she would vote against the government on every issue, but certainly on issues which I know other members of the

Labor Party do not support but which they are required to support because that is the way in which the Labor Party works.

As the President said last week, this undermines the Westminster system of Parliament. The motions passed last week in the other chamber really amount, I believe, to an abuse of parliamentary process. Alan Carpenter should simply let the Attorney General and the Director of Public Prosecutions decide on the issue of any false evidence, if there is false evidence. I certainly do not believe that I provided any false evidence. However, that is for them to decide, not for Alan Carpenter to decide just because we were having a federal election. I am quite pleased, as an outcome of all that, that the Labor Party has a net loss of one seat in Western Australia, and possibly two with the seat of Swan still in the balance. That goes against the six per cent swing across the rest of the country.

The committee has recommended in its report that the findings are not serious enough to require that any member be expelled. That is all that we really should be considering when we are looking at the amendment proposed by Hon Kim Chance. The committee specifically rejected this at page 41, if the Leader of the House has not read that reference. The chamber should treat the government's latest attempt to expel Hon Shelley Archer and me in the same way that the motions were treated in this chamber last week when the President ruled against them. The Legislative Council should make up its own mind and respect the report that has been done by the committee of this chamber and not go further by influence of any members outside this place, even if one of those members is the Premier of Western Australia.

Hon SHELLEY ARCHER: I first want to stand here and say what the real reasons are for this amendment that has been moved by this government and by the Premier. When I stood up for my beliefs and for myself, they called me a troublemaker. When I spoke my mind, thought my own thoughts or did things my own way, they called me egotistical. When I refused to tolerate injustice and spoke against it, they defined me as arrogant. I have the courage and the strength to allow myself to be who I truly am and do what I truly believe in, and for some this was intolerable. How dare I think for myself. I am outspoken, opinionated, strong-willed and determined. I want what I want and what I believe is best for my constituency, and I have fought very hard for it.

I stood by my friends. I may not agree with all that my friends do, but I certainly do not walk away from them, and I certainly do not go to the media and vilify them. I go to their homes and I tell them, "I don't agree with what you've done", but that is a personal matter between my friends and me - not for the media and not for the Premier. I say to this government and the Premier, "Try to stomp on me; try to douse my inner passion; try to squash every ounce of my enthusiasm. You won't succeed." I embrace the ideals, the passions, the enthusiasms, the courage and the strength to do what I think is right, and this government will never change that in me, no matter what it tries to do to orchestrate my expulsion from this place.

I will go to the actual amendment that was moved. I rise in defence of my right and the right of my constituents to be represented by their elected member, in defence of the chamber and its processes and in defence of my position as a member of this place. Before speaking to all of these important matters, I invite members, when considering this amendment, to have at the forefront of their minds, first, the seemingly indisputable conclusion of this chamber that the conduct under consideration is not the worst of its kind - a matter conceded even by those proposing the amendment, as members will recall from the opening remarks of Hon Kim Chance yesterday afternoon. The power to expel a member is a power of last resort. This much is borne out by the very few instances in the entire history of the Westminster system in which that power has been exercised, and in respect of which I thank, in particular, Hon George Cash for his observations yesterday.

I suggest to honourable members that the power to expel a member of this chamber has not been exercised in the history of this Parliament because those who have sat on these benches before us have accepted the fundamental democratic principle that it is the people of this state who rightly determine who shall sit in this chamber, and not the Premier. Specifically, it is the democratic right of voters in the Mining and Pastoral Region to determine who shall represent them - not the Premier. This amendment, brought at the instance of the Premier, subverts that democratic right. The people, not the Premier of the day, select the members of this place. If this amendment is carried, it will set a dangerous precedent for every single one of us who sits here for the removal of elected representatives at the whim of a government motivated purely by political reasons, and we have all seen what they are. That too has been apparent to the speakers before me who have addressed this issue during the course of the debate.

The motion to expel me is a very short-sighted, knee-jerk reaction to a political problem that was created solely by the Premier when faced with the prospect of having an Independent member sitting on the crossbenches and who will think independently and vote according to her conscience. Democratic principles should not be sacrificed for the short-term political expediency of silencing a new Independent voice in this place. This

amendment shows no respect for the rights of the voters in my electorate. This amendment shows no respect for the rights of this place to consider the report of the select committee and to debate its recommendations. This amendment shows no respect for select committees of this place. It is not for the Premier to substitute his views for the recommendations of the committee. Expulsion from this place was not recommended, as has been expressed by a number of speakers already.

The select committee's report is 496 pages long. Two findings have been made against me. I do not agree with those findings, but I treat them very seriously. It is important that I correct any misinformation that has been spread about me by the Premier in the time since this report was tabled. Indeed, it is fundamental to a fair consideration of this amendment that members understand, as is recorded in the report, that I was not a party to the development and implementation of the strategy that the committee found had been put in play on behalf of Cazaly Resources, nor, as the committee found, was I informed of it. I thank Hon Norman Moore for bringing this to the attention of the chamber during his speech yesterday. The committee found that I made a mistake in talking to Mr Burke on 30 October 2006. I told him about the attitude of various members of the Standing Committee on Estimates and Financial Operations towards a possible inquiry into the state's iron ore industry. Whatever I might want to say about the process followed by the committee, I accept that I had the discussion.

With respect to the committee's processes generally, I endorse the proposal that the complaints by me and others who appeared before the committee, which are recorded in correspondence tabled by the President, should be referred to and investigated by the Standing Committee on Procedure and Privileges. I further emphasise that the committee did not at any time, anywhere in that report, recommend any expulsion of either me or Hon Anthony Fels. No doubt this is because the committee was aware that expulsion is warranted only in the most extreme and rare of cases. I remind the chamber that this place has never expelled a member. Expulsion is a punishment out of all proportion to the accusations made against me and Hon Anthony Fels. The committee has not found me guilty of any crime, nor could it ever do so. Contrary to media reports, it has not recommended that I be prosecuted. That is a decision to be made by someone else. To the extent that what I said amounts to a breach of privilege or contempt of Parliament, I am of course prepared to apologise to the house, if it accepts the committee's recommendation that an apology is in order.

I did not disclose the deliberations of any inquiry being conducted by a committee, in my view. That is my view, and I gave evidence to that effect to the committee. My evidence is reproduced at page 196 of the report. I said -

> *. . . my understanding at the time was that it was only when the matter became an inquiry that you were not allowed to discuss the deliberations of the committee in terms of the inquiry, not in terms of discussion about how you get that inquiry.*

I also said -

> *. . . you have not understood my answers at all in relation to what I think is parliamentary privilege and contempt of Parliament. The matter that was before the committee in my view was not an inquiry and it could be discussed.*

I spoke about the provisional attitude of members of the committee towards a potential inquiry. If that was a mistake, it was a mistake born out of my inexperience. The committee said that I should have known better, and maybe I should have, but failing to know better does not warrant expulsion. I was not alone in making the mistake of this nature. Hon Giz Watson, who is a considerably more experienced member, made the same mistake, yet there is no motion to expel or suspend her.

I take some comfort from the forceful addresses made yesterday by Hon Norman Moore and Hon George Cash about the uncertainty surrounding the meaning of "deliberation". What they said is my understanding of what deliberations are. In my submission, the chamber should do as Hon Kim Chance has suggested, which is to consider all the evidence in its proper context, including my evidence about what I understood could and could not be disclosed, and my understanding of "deliberations" of committees. If that is done, it will be clear in my submission that I suffered from the same confusion as many other members about what constitutes committee deliberations. This is not a matter of recent invention, as we heard last night. It is fundamental to the chamber's decision about whether it should adopt the committee's recommendation that this issue be resolved. It goes to the very heart of how the committee system operates and the understanding of members generally. It goes to the heart of whether the finding that I disclosed deliberations and that I was in breach of parliamentary privilege should be adopted.

The committee found that my answers to some of its questions were wrong. The committee described my answers as false, but it did not find that I deliberately or knowingly gave false evidence. I am entitled to the presumption of innocence. According to the Premier, I am not. Paragraph (1) of the amendment before the

chamber proceeds from the presumption that I am guilty of knowingly giving false evidence, a matter that was expressly not considered by the committee. The approach in paragraph (1), in my view, conflicts with the approach in paragraph (5) of the amendment. The Premier, and those moving this amendment, are the accusers, the judge, the jury and hangmen. The motion seeks to punish me and Hon Anthony Fels without the benefit of any hearing. This is not how a democratic or judicial system operates. The same applies to Hon Giz Watson's foreshadowed amendment, which would have me and Hon Anthony Fels suspended. To say that suspension is warranted in circumstances for which suspension was not recommended by the committee puts Hon Giz Watson in the same position as me and Hon Anthony Fels. It is too cynical a view, I think, to believe that Hon Giz Watson has done a deal with the government.

Because of the serious nature of the motion, and because the outcome of the motion may change the vote in this place, an absolute majority should be required before this motion can be passed. This circumstance is entirely on par with the circumstances provided for in section 73(2)(c) of the Constitution Act, which requires an absolute majority of both houses to be secured for any bill that expressly or impliedly provides that the Legislative Council or the Legislative Assembly should be composed of members other than members chosen directly by the people. With all these matters in mind, I ask members to uphold the democratic rights of those who elected members to this place, the traditions and dignity of this place and the principles of fairness upon which our judicial system depends by rejecting this amendment in its entirety.

Many accusations and comments have been made in this house and in the other place about the 20 so-called false answers that I provided, so I would like to go into those. In comments I will make now, I will bring out a number of matters. Those are: the objection that I made to counsel assisting; the confusion with respect to the meaning of "deliberations"; and the evidence upon which the committee relies to support its findings. I have a fundamental objection to the paragraphs of this finding that concern questions asked of me by a person whom I believe was a stranger to the house, acting with the authority of counsel assisting. As I submitted to the committee, and as I recorded in this house through my solicitor's letters to the President, the committee had no power to engage counsel assisting and those questions and answers put by the stranger, Mr Urquhart, are ultra vires and should not be acted upon by this chamber. At a minimum, these matters should not be referred to the Director of Public Prosecutions, as is proposed in the motion, until there has been a determination by the house or a committee of it about whether there was in fact the power to engage counsel assisting. The relevant paragraphs are (xi), (x), (c) and (g) of that matter in the document.

The second issue relates to the interpretation of "deliberations". As members have seen, I have a great deal of trouble, and so do other members of this place, in relation to what deliberations are. When regard is had to my answers in paragraphs (iv), (viii), (ix), (x), (c) and (g), it can be seen that all those answers are in response to whether I had disclosed deliberations of the Standing Committee on Estimates and Financial Operations. As I have said earlier, it was my understanding that I had not disclosed any deliberations, because there could be no deliberations unless and until it was agreed that an inquiry should be held. My answer to those questions recorded at paragraphs (iv), (vii), (ix), (x), (c) and (g) must be considered in the context of that understanding and the general misunderstanding, or at least uncertainty, that exists about the meaning of "deliberations" as was discussed in this place last night. Why should I be penalised because I suffer from the same confusion as other members of Parliament? Nowhere in the report could I find any evidence that the committee, either through the chairman or through its appointed counsel assisting, put to me that my understanding of what constituted deliberations was wrong. I say tonight that these matters should be taken into account in determining whether the evidence I gave to the committee was false. If the Committee of the Whole House agrees there is some distinction to be drawn between deliberations, proceedings and administrative matters pertaining to committee work, it seems to me that there has been no disclosure of deliberations. Therefore, this finding, and its related recommendations, cannot be adopted by the house. Given the severity and possible impact that these matters could have on my livelihood and life in general, I ask the chamber to give them - as I know it will - the most serious and careful consideration. I believe I am entitled to the benefit of any doubt that may arise in members' minds when looking at these materials and the findings of the report in their proper context. When regard is given to the evidence relied upon by the committee to support its finding of 20 paragraphs of false evidence, members will see that the committee relies upon four telephone communications, two of which were phone messages; three emails; the fact that I was not asked any questions by the Corruption and Crime Commission in February 2007; the media coverage that reported that Brian Burke had approached a number of Labor Party members of Parliament; and the fact that I routinely delete my email inbox. It is necessary for me to respond to each of the 20 paragraphs because of the very serious nature of and possible implications arising from the findings. I will try to do that as briefly as I can.

As a general observation, I find it astounding that the committee should seek to rely upon and use against me the fact that there had been media coverage of Brian Burke's dealings with other members of Parliament. It is also astounding that the committee could somehow use the fact that I had been called to give evidence to the CCC,

but had not - and I repeat "not" - been asked a single question by the CCC about this matter, as evidence that I have given false answers. No weight appears to have been given by the committee to the fact that in my capacity as a member of this house, I receive hundreds of communications in any given month, so it is not surprising that I do not recall the communications upon which the committee seeks to rely.

It is also important to make this point: all of the findings relate to answers I gave on 10 April 2007 and 10 September 2007. It was not until my last appearance before the committee, on 24 September, that the telephone intercept of 30 October 2007 was played. I refer to paragraph 10.30, on page 193 of the report. When that telephone intercept was played, I was asked whether I had any recollection of the discussion. My response was that I did not. My evidence in that regard is set out at pages 194 and 195 of the report. I was asked -

> Do you have any recollection of that telephone conversation?

I responded -

> No, I do not have any recollection of that phone call.

I was then asked -

> At all?

I responded -

> No.

I was then asked -

> When you spoke to Parliament on 20 March of this year, had you forgotten about that conversation?

I answered -

> Mr Urquhart, I just told you I have no recollection of that phone call.

Then I was asked -

> I am asking you now six months ago whether you had a recollection of that conversation.

I responded -

> No, I do not have any recollection of the phone call.

I did not deny that the phone call occurred; I could hardly do so. In any event, why would I deny those conversations took place when it was my view that those matters were not deliberations? It was not false to say that I do not recall those conversations; it just shows that I have a terrible memory. It was not false to answer in the way I did, if, in fact, I did not recall those discussions. Remember, it was one discussion - it was one phone call. Was I supposed to lie to Mr Urquhart and say that I did recall those discussions when I did not? Nowhere in that part of my examination and nowhere in any other part of the report will members find any evidence that it was put to me that I had lied or that those answers were false. Why did Mr Urquhart not put it to me then and there, as in the evidence on pages 193 and 194 of the report, that I was lying when I said I did not recall these discussions? It is my submission to this chamber that because of the serious nature of these findings I should be entitled to the benefit of any doubt that members might have in considering whether these answers can truly be described as false.

I turn now to particular paragraphs of finding 3 in the report. I refer to paragraph (i). As I have indicated, I had no recollection of any discussions with Brian Burke, even after the telephone intercept was played. The fact that I had no recollection of this matter when I made the statement on 10 April does not support a finding that the statement was false. The evidence relied upon by the committee was not put to me until 24 September 2007. It was not put to me then that I had been lying in April 2007 when I made my statement. I ask: why not?

I refer now to paragraph (ii). I invite the house to obtain a full copy of the transcript of the hearing on 10 April 2007 so it can consider this answer in context. I am unable to disclose that evidence without the authority of the house. Therefore, I invite the Committee of the Whole House to seek access to that transcript so that members can determine whether this answer was given in the context of the discussions relied upon by the committee, or whether it was given in respect of some other earlier conversation not referred to in the report. In the absence of the chamber's referring to that evidence, it is my submission that it is unsafe for the house to adopt this recommendation.

I now refer to paragraph (iii). When regard is given to the communications relied upon by the committee, it is my belief that those communications do not bear out the finding that I was a go-between. According to the *Macquarie Dictionary*, second edition, a go-between is "someone who acts as an agent for another". If regard is

had to the conversation sought to be relied upon, it certainly was not me who was anywhere near being a go-between. I believe this is just a matter of semantics.

I have already addressed paragraph (iv), which deals with deliberations, and I do not think I need address it again.

In paragraph (v), once again, when regard is had to the communications relied upon, it is clear that Mr Burke had already approached Hon Anthony Fels. Mr Burke left a telephone message saying that Hon Anthony Fels was going to get in touch with me. As the telephone intercept of 30 October 2006 records, I was told that Mr Burke was going to get the Association of Mining and Exploration Companies to contact Hon Giz Watson. At the time I gave my response to this question, I had no recollection. That lack of recollection of the telephone conversation was not challenged directly by the committee, and the house will recall that this telephone intercept was not played in evidence until 24 September, some five and a half months after I answered this question.

I refer now to paragraph (vi). The committee is at a distinct advantage in that unless I want to expose myself to another claim of breach of parliamentary privilege, I am limited in my ability to respond to this paragraph. I seek leave from the house to refer to the evidence relating to these emails referred to by the committee. In the absence of that leave, it is my submission that it is unsafe for the house to adopt this recommendation.

I now refer to paragraph (vii). The committee's response to my evidence set out at page 203, states -

> . . . the Committee does not accept that she did not recall this conversation.

It is unclear to me what conversation the committee is referring to in respect of this answer, so it is my submission that the house should not conclude that this answer was false. I have dealt with the matters in paragraphs (viii), (ix) and (x), as they deal with the deliberations of the committee. I have also addressed paragraph (xi) which also deals with issues of deliberations of the committee.

In paragraph (xii), where regard is had to the evidence sought to be relied upon by the committee, it is important to note that this evidence needs to be considered in context. When this answer was given, none of the discussions sought to be relied upon by the committee had been put to me. I maintain that I have no recollection of the conversation on 30 October with Mr Brian Burke. In the absence of being able to refer to this answer in the proper context of the evidence before the committee, in respect of which I seek leave of the chamber to refer, it is my submission that it would be unsafe and unfair of the committee to accept this finding. This paragraph of finding 2 suffers from the same defect as a number of other paragraphs. What conversation is the committee referring to in its observations about the statement that I made on 10 April 2007? In the circumstances it would be unsafe for the chamber to adopt this paragraph of the finding. Paragraph (b) of finding 2 suffers from the same defect as a number of other paragraphs, including paragraph (a). The answers given do not pertain to a conversation. What conversation is the committee referring to in its observations about the answers given by me? In the circumstances, again, it would be unsafe for this chamber to adopt this paragraph of the finding. Paragraph (c), which I have already addressed, again is to do with the deliberations.

As for paragraph (d), I took my affirmation before the committee very seriously and I take the findings of this committee even more seriously. In assessing the merit of this paragraph of finding 2, I encourage the chamber to look at the report in its entirety and to look at it objectively. The number of personal observations and emotional remarks made throughout the report need to be considered and reviewed with some vigour. As for paragraph (e), again I must ask: what conversation is the committee referring to in this paragraph? The question asked of me makes no mention of a telephone conversation of 30 October, or any other conversation for that matter. This answer should not be construed, as the committee would have it, as an attempt by me to deny the fact that I had a telephone discussion on 30 October. If that is what the committee wanted to do, it ought to have got its counsel assisting to ask me outright, which he did not. In the context of the very serious consequences that could flow for me, this is the very least that ought to have been done. Paragraph (f) is related to paragraph (iii). Again, it is a matter of semantics in my view. The question is unclear and ambiguous. What is meant by asking "did I assist him"? The committee is at a distinct advantage in the way that it construes and uses the evidence in circumstances in which privilege prevents me from disclosing other evidence to the chamber. Paragraph (g) has already been addressed, and again goes to matters of deliberation.

Paragraph (h) is related to paragraph (v). At the time I gave this answer, the telephone intercept of 30 October 2006 had not been played. Once again, when regard is had to the communications relied on, it is clear that Mr Burke had already approached Hon Anthony Fels. He left a telephone message saying that Hon Anthony Fels was going to get in touch with me. He had already approached him. As the telephone intercept of 30 October 2006 records, I was told that Mr Burke was going to get AMEC to contact Hon Giz Watson, but at the time I gave my response to this question I had no recollection of that discussion. That lack of recollection was not challenged directly by the committee, and the chamber will recall that this telephone intercept was not

played in evidence until 24 September 2007, some two weeks after I gave this answer, which the committee now says is false. The report makes reference to when the telephone intercept was played at paragraph 10.30.

Paragraph (2) of the amendment deals with the statement I made to the house on 20 March 2007. I do not deny that I made that statement. It was made well before this current committee commenced its inquiries, and so it was quite wrong of Hon Kim Chance to say yesterday afternoon that -

> Looking back, the statement to this house on Tuesday, 20 March 2007 by Hon Shelley Archer was extraordinary. Despite clear evidence of the member leaking information from a parliamentary committee to Brian Burke, despite providing false evidence to a privilege committee on 20 occasions, the member stood in this chamber and knowingly and deliberately misled Parliament by claiming that she had conducted herself properly and according to standing orders at all times.

Hon Kim Chance seeks to put the cart before the horse, something that he has obviously been taught very well by the Premier. As I have tried to explain, it was my understanding that there was nothing improper in telling another person that a proposed inquiry might be held. Again, we come back to what constitutes "deliberations". If what I disclosed was not committee deliberations, there is absolutely nothing inappropriate in the statement that I made to this place.

This is just a blatant political attack by the Premier against me. We know why it is a blatant political attack. It is because I am now an Independent in this place and I can vote based on my conscience. He is quite aware of the fact that some of his legislation may not go through because of my decisions. This is the same Premier who has vilified me because of my friendship and my continuing friendship - and I will continue it - with Mr Burke and his family. People need to understand that my friendship is not just with Brian Burke; it is also with his wife and children. It is the Burke family that I am friends with. For the Premier to continuously say that it is with Mr Brian Burke is an absolute nonsense. This is the same Premier who has vilified Mr Burke, but who rang him and asked him for his support and his votes and his numbers to become Premier. How do I know this? It is because I was at Brian Burke's house when the call came through from Mr Carpenter when he was looking for numbers to be the Premier. This is the same man who now vilifies Mr Burke in the press and everywhere else. This is the same Premier who stood in the other place and said that in March he had not asked for my resignation when he had. In March he asked for my resignation and I said no, I would not resign; I said that I would not resign from Parliament and that I would not resign from the party. That was after I came out of the Corruption and Crime Commission in February or March of this year. That is all I have to say.

The DEPUTY CHAIRMAN (**Hon Graham Giffard**): At one point in her speech Hon Shelley Archer indicated that she was seeking leave of the house to table documents that I think are in the possession of the select committee. Is it her view that she seeks to achieve that?

Hon SHELLEY ARCHER: I am actually seeking the leave of the house to have the documents produced so that Hon Anthony Fels and I and others are able to answer -

The DEPUTY CHAIRMAN: We are in the Committee of the Whole, so we are not able to deal with that question as a Committee of the Whole. That will need to be done as a substantive motion in the house. If Hon Shelley Archer proposes to proceed with that at this point, we will have to move that we report progress so that we can deal with that question. Is that what she is seeking to do now?

Hon SHELLEY ARCHER: Yes, that is what I am seeking to do.

Progress reported and leave granted to sit again, on motion by Hon Kim Chance (Leader of the House).

As to Tabling of Papers

HON KIM CHANCE (Agricultural - Leader of the House) [8.40 pm]: At this stage, Hon Shelley Archer has sought leave to table a document. That is the question, as I understand it, that we have to determine in the whole house. I think that the question has to be put to the house, which is why I paused.

HON SHELLEY ARCHER (Mining and Pastoral) [8.40 pm]: I seek leave of the house to have the full transcripts of the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations tabled in the house.

Ruling by President

THE PRESIDENT (Hon Nick Griffiths): Before I give the call to the Leader of the House, although no standing order explicitly deals with this matter, the custom and practice of the house is to the effect that what the honourable member proposes requires notice of a motion to be given and then, on a subsequent day, for a motion to be moved.

Hon KIM CHANCE: I was going to ask whether the President thought it proper for him to leave the Chair while we considered that question. However, given that the President is clear on the matter, that seems to be unnecessary. I await the President's advice.

The PRESIDENT: I am clear on the matter. That is the clear custom and practice of the house. I appreciate that we are dealing with very complex and difficult issues for all members of the house, but the way we must deal with them is in accord with the custom and practice of the house; otherwise, we might find ourselves straying into error.

As to Committee

HON KIM CHANCE (Agricultural - Leader of the House) [8.42 pm]: In which case, Mr President, I move -

That the house resume in the Committee of the Whole House.

Question put and passed.

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon George Cash) in the chair.

Amendment to Motion

Progress was reported after the amendment moved by Hon Kim Chance (Leader of the House) to the motion moved by Hon Murray Criddle had been partly considered.

Hon KEN TRAVERS: I will make a few brief comments about this matter, particularly as a member of the Standing Committee on Estimates and Financial Operations. I will deal with some of the issues that have been raised by other members in this place. I want to commence by looking at the comments made by the Leader of the Opposition yesterday to the effect that the amendment the Leader of the House moved to the motion was related to the politics of the issue. The Leader of the Opposition said that when Hon Shelley Archer advised members that she was resigning from the Labor Party, she would vote independently, and that, therefore, the Premier subsequently said that she needed to be expelled from the Parliament. As a starting point, that matter must be corrected. Anyone who looks at the history of this matter will find that at approximately 8.30 am on 15 November, the Premier was on the radio calling for the two members to be expelled from Parliament. It was not until sometime later on 15 November, at about 10.30 am or 11.30 am - I cannot recall the exact time - that Hon Shelley Archer announced her intention to resign from the ALP and to sit in this place as an Independent and that she would vote against government legislation. As a starting point, members must understand that the claims made by the Leader of the Opposition during the debate last night on the motivation of this amendment to the motion are absolutely false. The timing does not support the allegations that were made by the Leader of the Opposition.

There has been a lot of discussion over the past two evenings about what happens when these types of matters arise and the seriousness of them. These types of matters of privilege are not something with which members often deal. However, it is clear that when we do, matters of privilege are some of the most important matters that we will probably ever deal with in this place. This is not an easy issue. Often we must deal with precedents which date back many years and which have evolved from other Parliaments. The privileges of the house were determined by those rights and privileges of the House of Commons back in 1989. We must go through those things. However, there are very clear processes and precedents for how matters of privilege are dealt with. Sometimes there is contempt of this house that the house considers of such a minor nature that we do not need to entertain forming a privilege committee to investigate it. I am sure that we could all think of examples of a minor contempt of the house that the house considers to be below its dignity to actually investigate and report on. The next level of contempt of this Parliament involves matters of minor contempt that are recognised without punishment. The next level is contempt in which we seek to punish members. As members who have read the report will know, obligations derived from the privileges of the House of Commons as well as a number of our statutes provide for us to punish members. Again, according to the history of this place, when members are found in contempt of Parliament, they are often given the opportunity to apologise first. Alternatively, members may come into this place and seek to apologise and advise the house that they understand that, although they did not intend to do something wrong, they may have, and for that they apologise to the house for being in contempt. The houses of Parliament have traditionally given members significant latitude and accepted their apologies and often not then imposed a penalty. At other times, despite a member's apology, the house will say, that, nevertheless, it thinks it is an important matter that needs to be punished and it will issue a range of punishments - reprimand, suspension, the serious punishment of expulsion and, ultimately, depending on the nature of the contempt, the penal sanction of incarceration.

However, houses of Parliament have always been very harsh on members who, having been confronted with allegations of wrongdoing, seek to deny those allegations to the house. That is the situation in which we find ourselves tonight. We have a report here that deals with the circumstances I have outlined; circumstances in which members have been in contempt of Parliament. I would not say the contempt is minor, but, although we should not seek to expel, it requires action by the Parliament. It would be up to individual members in this place to determine in their own minds what the penalty should be, and that is the process we are going through.

However, on those matters regarding Hon Anthony Fels and Hon Shelley Archer, at recommendations 3 and 6 the privilege committee has found, firstly, that the members committed a disclosure, which is a breach of privilege and in contempt of Parliament. The committee then recommended to the Legislative Council that it order certain things by way of a penalty for the breach. It suggested that the members be disqualified from membership of any parliamentary committee for the remainder of the session; that the members undergo further induction training on parliamentary privilege from the Clerk of the Legislative Council and the Clerk report to the house on the completion of such training; and, finally, that the members make an unreserved apology to the Legislative Council while standing in this place within seven days of the order having been given. That is in respect of the unauthorised disclosures of the committee. I say to members that that is an appropriate level of penalty for those members. Much discussion has been undertaken about whether the actions of those members are more or less serious than actions by members in the other place in leaking documents specifically related to the committees. It could be argued that the more serious penalty would have been appropriate. However, I accept the view of the privilege committee that we consider this matter in terms of the recommended penalty for the breach of privilege regarding the deliberations.

I make two points on this; that is, it has always been accepted in the Westminster system that members have an obligation to make sure that they inform themselves of the privileges and rules of the house. Although the Legislative Council may have in place training mechanisms, I was always given the clear understanding when I became a member of this place that there is an obligation on all of us to learn those rules and be fully cognisant of them. It is not like many work areas in which training is provided; we are expected to learn those matters ourselves. How would members feel if they realised that, after leaving a committee, members contacted a third party and described to that party the entire deliberations of the committee and exactly the views of different members of the committee and engaged in conversations that clearly sought a desired outcome from the committee as a result of the member passing on that information? I doubt that, prior to this select committee report being tabled, any member in this place would have assumed that a member of this place would do that immediately following a committee meeting.

As I say, I would have pushed for a slightly harsher penalty on that matter because I think it is quite serious to walk out and divulge information that is clearly for the purpose of assisting others to work out how to manipulate a particular outcome from a committee. I also say that much has been made by members in this place, as did the Leader of the Opposition yesterday, of the fact that an inquiry of such nature was never established. I again ask members to consider whether it was due to the actions of the two members who were pushing for the Estimates and Financial Operations Committee mining inquiry to be established or the actions of other members on the committee in seeking to understand better the reasons for such an inquiry. I think members will find in the report some of the evidence I gave to the select committee; for example, the test I wanted undertaken before agreeing to the mining inquiry was whether it was in the public interest or in the private interests of a particular company. Members will see that evidence was given not by me but by one of the Estimates and Financial Operations Committee staff that it was made very clear early in the committee deliberations that the proposed inquiry was about Cazaly Resources. As a member of the Estimates and Financial Operations Committee, I wanted to understand more clearly whether it was a matter that went to the public interest or the private interests of the committee. Again, I hope that members in this place would not seek to establish a committee for the private commercial interests of a corporation. It may be that, by establishing an inquiry into the public interest, it leads to a benefit for a private interest, but the motivation must always be in the public interest. Again, the public interest may be served when only one individual is affected by the rules or the matter that is being inquired into. We need to keep coming back to whether it is about the public interest or the private interest. I would say to members today that those are some of the reasons the committee was never established. It was not because of the two members who were seeking for the inquiry to be established or anything they did. The other thing that prevented the inquiry from being established was the terms of reference. Members can go to the report to see whether the terms of reference that the members were seeking to set up the inquiry were able to be inquired into by that committee; that is, whether the inquiry they were seeking to establish fell within the terms of reference of the committee.

The report makes reference to the fact that Hon Anthony Fels advised the committee that he had sought advice about the terms of reference and whether they were in compliance with the terms of reference of the committee from Mr Malcolm McCusker, QC, and Phillips Fox. Those are the two from whom the member said he sought

advice. The interesting thing - I again ask members to go through the report, especially the comments I made to the committee - is that the member did not mention that he had sought advice from Noel Crichton-Browne. He advised the committee that he had received that information from Mr McCusker, QC, and Phillips Fox. He did not advise the committee that he had received that information from Mr Crichton-Browne. I ask members to think about that point and to go back to the speech that Hon Anthony Fels gave earlier this evening in respect of some of the comments he made. That, to me, is a very clear point about the way this operated. Again, one of the things that always made me concerned - members will find this in the evidence in the report - was that I looked up on the Internet who Phillips Fox and Malcolm McCusker represented. I identified that they were certainly representing Cazaly Resources. That brought me back to the consistent issue of whether or not this was in the public interest or the private interest; that is, the manner in which this committee was trying to be manipulated by forces outside the committee and the way in which two of the members provided information of what was going on in the committee to parties outside the committee that was clearly intended to benefit and to try to get an outcome for those people in terms of getting their desired outcome from the committee. That is exactly what those people proceeded to do in terms of the letter that has been referred to as one example from the Association of Mining and Exploration Companies. That is the first issue with respect to the penalty concerning a breach of privilege through releasing unauthorised information about the deliberations of the committee.

The more serious matter that is contained in this report - and arises if one studies the issues of parliamentary privilege and how it operates both in this Parliament and other Parliaments of the Westminster system - is that once members have committed a contempt and the allegations are put to them and they are asked about those allegations, and if those members seek to provide false information in respect of those allegations as a way of avoiding the matter, that is considered to be a far more serious situation. In some places it may be referred to as a grave contempt of Parliament. It is for those matters that members will find that the punishments around the world within the Westminster system have always been far more severe than what is normally authorised. When a person gives false answers to allegations that have been put, and when that has been proved by the Parliament, the penalty is far more severe than other penalties, even when apologies have been given.

I understand fully the difficulties that the Select Committee of Privilege members must have faced with this committee of inquiry and the deliberations they faced. I understand fully that for six months they must have gone through a fairly intense and difficult time collating this evidence. We have seen the legal challenges that I suspect many of us will never face in our time in the Parliament. They were not able to talk to anybody about what was going on in that committee. As the report outlines, they were very restricted about what penalties could or could not be dealt with. This is where I personally take a different view from that recommended by the committee. I note that at least one member of the committee felt that the option to expel without pay was an option open to this chamber.

Hon Bruce Donaldson: Did you say, "expel without pay"? You should have used the word "suspend".

Hon KEN TRAVERS: I did mean to say suspend without pay. I have to say to Hon Bruce Donaldson that I suspect part of my reasons for thinking about that was to refresh my memory about what was said in the chamber last night. The uncorrected transcripts of *Hansard* also referred to another member referring to expulsion without pay. I suspect that was floating through my mind at the time. I appreciate the member correcting that.

I meant to refer to the issue of whether or not this house has the competency to be able to suspend a member without pay. I am not in a position to know the minds of the committee members, but the report also talks about whether or not a suspension with pay is a paid holiday. For me personally, my preference would be suspension without pay for people if we are looking at the issue of suspension. If we cannot look at the issue of suspension without pay, I guess that members have two options. The first is whether we go to suspension with pay. The members have ruled that out. The second is that we go to expulsion. I can understand why every member of this Committee of the Whole House will have a different view about expulsion. That is a correct thing for this chamber to be having a debate on tonight. Some members have tried to put to the chamber today that it is improper for people to have expressed a view before we got on to the debate tonight about what they think this chamber should do. Often in this place members say that the government and others should be making it clear to the chamber what its intended position will be. I think what happened last week was that the Premier made it clear that the government's position in the chamber tonight would be for expulsion. I accept that that is not a view that will be shared by everybody. I can respect that view from members if they say that, on this occasion, expulsion is too harsh a penalty. I have in my mind what a member has to do to be expelled. The only explanation I have been given so far is that that should happen if a person gets caught a second time for giving false evidence to a privilege committee. That is when the person would be expelled. That is a view that members in this place have a right to hold. However, when we move to suspension, I do not know. Maybe the members of the committee are in a better position to give their views to the chamber on this matter. However, after reading the report, I certainly was left with the impression that there clearly had been some discussion

within the committee about the issue of suspension. I think all the committee members indicated that they thought a suspension with pay was a paid holiday, and some members felt that a suspension without pay was not within the competency of the house. As I said, my view is that we do have that competency. We obtained our privileges from the House of Commons in 1989. It is certainly my view that we have that capacity.

I also have the view that a suspension with pay is still an appropriate penalty. I suspect that in many years to come people will remember that a member of the other place was suspended. Whether it was with or without pay will not be in anyone's mind at that time; it will be that that was the member who was suspended from the Legislative Assembly of the Parliament of Western Australia - something that is very rare indeed, but something that is an appropriate penalty to send a very clear message from this chamber that we will not tolerate and will not accept members giving false evidence before a parliamentary inquiry. That is what we have in front of us tonight; that is, findings of a committee that we established for the purpose of determining these matters. The committee has gone away, looked at all the evidence, returned to this chamber and given us findings that say that these members gave false evidence to that committee - one of the most serious matters that we can deal with.

The question before us tonight is the standards we want to set for this place. Members can put aside the expulsion, if that is what they want to do. I urge members in this chamber, if they think expulsion is too serious, to say what is the next level of penalty we need to determine to set the standards. Some members came into this place only after the last election. Hopefully, they are looking to stay in this place for as long as some of us have been here. I suspect that many members who came into the Parliament after the last election will be hoping to stay in this place for as long as the Leader of the Opposition has been here. The standards that we set tonight will be the standards that apply in this place for all that time, and probably well beyond that. They will become the standards by which future members will look back and say, "That is the penalty for giving false evidence to a parliamentary committee."

If some members take the view that they are happy to walk out of this place after the conclusion of this debate and say that the two members who gave that false evidence should receive no punishment from this chamber for their contempt of Parliament, that is their choice. However, I for one do not think that should be the case. If members walk out of this place and do not say that giving false evidence to a parliamentary inquiry is a serious offence, which at the very least requires some level of suspension - my personal preference, as I have already said, is expulsion - I put it to members that we do not deserve to have the title "honourable" attached to our names anymore, because what we will have done is set a standard for this Parliament and for this chamber that says it is okay to give false evidence, when clearly allegations have been put to those members and those allegations have been repeated. That is the point I ask members of this chamber to consider when we get into the debate about the penalties that should be determined as a result of this report. What is the standard that we want to set for future members who may consider similar matters long after, I suspect, any member sitting in this chamber tonight has left the Parliament, no matter how long he or she stays in this place? That is one of the main issues that members in this place need to deal with in respect of the first two paragraphs of the amendment moved by the Leader of the House. Do we want to set a standard tonight that we, as members of this chamber, can all be proud of, or do we want to set a standard that says, when we walk away from this place, members can give false evidence and be found in contempt of the Parliament by a privilege committee, and for that there will be no penalty?

Members will move on and make reference to the other recommendations in this report. I think the amendment moved by the Leader of the House recommends that the recommendations be referred to the Director of Public Prosecutions for inquiry into whether or not criminal charges should be laid. The issue of criminal charges is a very separate matter. It may or may not be that criminal charges are laid against those members. However, if the Director of Public Prosecutions finds that not all the elements of the offence can be proved and that there is no likelihood of succeeding with a prosecution, those matters will not be proceeded with. That will be determined outside this chamber, and it will be well beyond the power of this house to then do anything. If those two members walk out of this chamber after the debate we have had today and will possibly have tomorrow without any penalty for their actions, the situation I have outlined could occur. There would then be no chance for this house to respond to the finding that those members gave false evidence. I ask members: is that what we really want to happen? Is that the standard that this chamber wishes to lay forth for the future?

I think we need to understand that there is the contempt of divulging evidence, there is the far more serious contempt of providing false evidence, and there is the separate matter of whether criminal charges should or should not be laid against those two members. Those three matters are quite separate, quite different issues, and this chamber needs to deal with each and every one of those matters. The issues about suspension and expulsion were not recommendations of the committee; they were conclusions.

At this stage I will sit down. I have some more points to make, but I might gather my thoughts and let someone else have a bit of a go.

Hon JON FORD: In the words that came from the mouth of Hon Shelley Archer, she made an accusation that the Premier had rung Mr Brian Burke about his numbers and sought Mr Burke's support for his premiership when he was contesting the leadership of our party. I have spoken to the Premier tonight as a result of that. I want members to reflect on how easily those words just came out of the honourable member's mouth, looking everybody straight in the eye and expecting us to believe them. When I put that to the Premier, his words to me were, "Fordie, that is an absolute lie; it is an absolute lie." He said that Brian Burke had rung him once. The Premier said that he was concerned that Brian Burke had his personal number, and as a consequence of that he changed his phone number. Everybody in cabinet is aware of that, because we all had to change our contacts and our phones. That is the position that he put to me. He asked me to correct the record. On that basis, he also said that his statement could be proven; he was prepared for anybody to go through this telephone records and determine whether he rang Mr Burke. We all know that the Corruption and Crime Commission will have all the records of all the conversations that anybody has had with Mr Burke. I daresay that that will be evidence enough in itself. The only defence that this member has for continuing contempt is if she can say that Brian Burke told her that. If the member is saying that she heard him say those words, which is what I thought she said, then she continues to perpetrate contempt against this house. The house needs to consider that in this debate. I want members to be aware of that and note it, because of the ease with which she perpetrated that accusation. It will come out in the record and members need to consider that.

Hon NORMAN MOORE: I will respond very quickly to the comments made by the minister. I guess he would be very sad that he cannot hang people twice. He has already tried once, and now he is trying a second time. I do not know who is telling the truth; I do not have the faintest clue. All I know is that the bar now for telling lies is very high, and the Premier needs to know that that is where he put it.

Hon BARRY HOUSE: I will get back to the issue at hand. I took on this privilege committee membership some seven months ago, with some apprehension. I knew enough about privilege committees to realise that it would not be easy, and that it would be something of a poisoned chalice. I knew that there would be challenges and disagreements about how we went about our business and what we brought back to this house. However, I took it on with two major objectives in mind: firstly, to establish the truth of the matter and get to the bottom of this issue; and, secondly and probably most importantly, to uphold and maintain the importance of this house of Parliament - the Legislative Council - and Parliament's role in general in our Westminster democratic system of government. I consider it important to uphold and maintain the rules and procedures of this house and to have the utmost respect for the role that institution plays in the scheme of things. It is also important that we have respect for the rights and obligations of members of the Legislative Council. Against that backdrop, I embarked on my role on the committee some seven months ago. Enjoy is not quite the right word to describe my experience in working with this committee over seven months, but I want to put on record my appreciation of working with Hon Murray Criddle and Hon Adele Farina, and the very dedicated and capable committee staff. I know that the three committee members approached the task at hand in the same vein. We wanted to conduct the inquiry without fear or favour; to put our political affiliations to one side and call it as we saw it. I believe that is what we achieved, and the report reflects that. There was always a cooperative spirit between the three members. I am not saying that at times there was not vigorous discussion and challenges on various issues; there was. However, at the end of the day, we were united in our agreement on procedures, findings and recommendations, with one minor exception that has been referred to; that is, the grounds for a penalty along the lines of suspension of a member of Parliament without pay.

At the outset, I guess I did not appreciate how onerous this task would be or how difficult the committee would become. It became very time consuming. If members read the report, they will find that there were well over 200 hours of meetings alone. Added to that was the enormous amount of time taken up with reading, research and travelling, as well as the time we were absent from our electorates. Members should not forget that all three committee members have country-based electorates, and that added another dimension of difficulty to the whole thing, but we got through it.

The procedure followed by the committee and the subject matter became very complex. The committee's interpretation of the practices, rules and procedures of the house and how they were put into practice became very important. The committee was faced at different times with an enormous volume of evidence, research and advice from many quarters. All that evidence, research and advice was considered in great depth and, I can assure members, nothing was taken lightly. Every decision we made was made after extensive analysis and discussion.

There is no doubt that this privilege committee is more complex than any preceding privilege committee of this place because of a number of factors, some of which have already been canvassed. The interaction with the Corruption and Crime Commission added an enormous complexity to our work. The CCC transcripts became available to us after the first round of witness hearings. They were not available when this committee was

established. That is different from the situation that currently exists in the other place. If not for the CCC transcripts coming to our committee and the evidence from the CCC, the inquiry could well have been completed after that first round of hearings - by mid-May. We could have reported by mid-May and this whole issue would have been done and dusted. Once faced with the evidence from the CCC - the evidence of telephone transcripts, which presented in stark black and white what people said at precise times to other individuals - it was no longer open to the committee to make decisions about its findings and recommendations on the basis of reasonable probability. The committee could not ignore them. It would have been a lot easier for the committee to have tabled the report in mid-May and walked away from the issue. The report would not have been nearly as complex as the final report. Having had this evidence presented to us, we could not walk away from it; we had to deal with it. Deal with it we did to the best of our ability.

I do not know whether the relationship between the Corruption and Crime Commission and Parliament is a world first or not, but it is certainly a first in our jurisdiction in this state. We were trailblazing to a certain extent. That alone presented some pretty interesting challenges. They involved the interchange of a lot of advice, documents and information. We were breaking new ground in that sense alone. We proceeded along that path with caution on the basis of the advice that was provided, some of which was presented in the report, and I believe we always kept the end objective in sight, which was to get to the truth of the matter.

Another layer of complexity was that most of the witnesses used legal counsel right from the start. Those legal counsel included some of the best known legal names in Western Australia. That alone presented the committee with a pretty interesting challenge in our private hearings. This was one of the factors that led to the engagement of counsel assisting, Mr Urquhart. We engaged Mr Urquhart to ask questions on behalf of the chairman. We did not engage Mr Urquhart to play any part in advising our committee in any way or to play any part in the deliberations of our committee, which he did not.

Another factor involved some changes in personnel along the way, which does not always help continuity. In the CCC itself there was a change from Commissioner Kevin Hammond to Commissioner Len Roberts-Smith. There were other unprecedented events as a result of changes to the staff of the house, which in turn meant changes to the staff of our committee. Of course, that involved the resignation and moving on of the Clerk Assistant (House) and the Clerk of the Legislative Council, who were involved in providing us with support and advice.

The committee processes also involved at one stage alerting the police dignitary protection service of our details due to the possibility of recriminations. I am not aware of any direct threats, but it is a very uncomfortable feeling to operate in an atmosphere in which somebody thought it was necessary to do that.

The types of witnesses themselves meant that this was not an ordinary committee in any way either. We were dealing with members of Parliament. Five members of Parliament appeared as witnesses, which is a pretty extraordinary event in itself. We were asked to inquire into and sit in judgement on our peers, which is not an easy thing to do. Witnesses came from the staff of the Legislative Council committee office and electorate offices. They included former members of Parliament, and very high profile members at that, because they included a former Premier of this state, a former senator and a former minister. That sort of thing does not come along every day in everybody's committee dealings. We dealt with lawyers, both as witnesses and as legal counsel for many of the witnesses. I must admit that the whole operation became far too legalistic for me and too much of a court-like environment rather than a proceeding of Parliament, but that is what we were faced with and we had to deal with that. Of course, the witnesses also included people from the mining sector in various capacities.

We were inundated and bombarded with written submissions, objections, opinions and sometimes stunts pulled by various people to in some way or other affect either their appearance before our committee or what we were trying to do. So that was another layer of difficulty and complexity.

Members might recall that at one stage of the proceedings, on a Thursday, the committee took the very unusual step of seeking the Legislative Council's approval to meet while the house was sitting that day. The details are in the report and I urge members to read it. The committee met three times that day and it had prepared a report to table seeking an order from this house to compel a witness to appear. However, that situation was resolved at literally the eleventh hour - probably the fifty-ninth and a half minute of the hour! So, that report was never tabled. That situation added a degree of difficulty and tension to the inquiry as well.

There were many changes in the timetabling of some of the committee's hearings. There were cancellations and rescheduling due to a variety of factors such as staff changes, the unavailability of witnesses - whom the committee tried to accommodate as best it could - and the availability of the committee itself, because committee members had some changes in their availability. Also, one or two hearings had to be rescheduled due to the availability of counsel assisting. The scheduling was pretty difficult and complex.

The committee had the difficulty of trying to avoid exposing evidence to witnesses before they appeared at hearings, which made simply managing the committee's proceedings pretty hard at times. In all those circumstances, some of the hearings did take on a court-like appearance and became very legalistic. Members of the committee had to keep reminding themselves that it was a parliamentary proceeding, not a court of law.

Hearings were conducted in private, which was a relatively new experience for me because I am used to working principally with standing committees, whose hearings are public, unless they are expressly sought not to be. The committee held its hearings in private. However, a short while ago it was proposed that all the evidence be tabled in this chamber. Before anybody is too quick to support the tabling of all the evidence of the privilege committee, I urge caution, because that evidence contains some very interesting and potentially very damaging material. I am sure it would be very interesting from the point of view of the media, who are probably very dirty on this committee because it was not conducted in public, so it missed out on a string of sensational front page stories along the way in the past six months. The evidence also contains some information peripheral to this committee's main business that includes some potentially very damaging and unfounded allegations and comments from certain people about certain other people. Those allegations and comments might make good sport in the community, but they are basically irrelevant to the main purpose of the committee. I assure members that I was quickly converted to the need for private hearings.

That was the background to our inquiry. Given all these factors, I am pleased with the report and pleased to claim ownership of it in conjunction with Hon Murray Criddle and Hon Adele Farina, and I stand by it. We knew that it would attract questioning and criticism from various quarters, both during the proceedings and after the report was tabled. That comes as no surprise and we certainly have not been disappointed in that expectation. I will address some of those issues very briefly. I urge those members who have not read the report - it is pretty clear that many members have read it in some detail - to read it, because it lays out in a very comprehensive style not only how we went about things, but also the justification for what we did. I am very pleased to stand by the report.

I respect the views I have heard put by members in this chamber, some of them forcefully. I respect the views that have been put principally by lawyers through letters to the President. However, let us keep in mind that they are only opinions; they are not the factual determination of these issues. They are views that people are entitled to put, and they have done so. Of course, other people are entitled to put other views. I can assure members that virtually all the issues were considered in considerable depth by the committee and taken into account. Those points were put, often very comprehensively and articulately, by some of our witnesses and their legal counsel. They were analysed and we sought advice on all of them. We relied heavily on advice from the clerks and associated staff of the Legislative Council. When it was required, we sought legal advice elsewhere. I wish to commend the staff of the Legislative Council. We are very fortunate to have a very dedicated, experienced staff. Given that there were some staff changes along the way, I applaud the role they played in the whole process. It was a great privilege to work with them.

I turn to some of the individual issues. The definition of "deliberations" has been raised. What does it constitute? The contention has been put that deliberations start only when terms of reference are formally adopted by a committee. However, deliberations clearly must involve general committee discussions as well. We were faced with Corruption and Crime Commission transcripts in which members revealed committee discussions and gave detailed blow-by-blow descriptions of what happened during committee discussions. There are no shades of grey in these matters; these members revealed and divulged committee discussions - who said what and who thought what about whom, and why. It should be remembered that this is a parliamentary proceeding. If analogies are to be drawn, I know that proceedings in this place are public; what is said here is on the public record. However, members also operate in a political environment. The analogy can be drawn with cabinet confidentiality. I think it is valid to draw the analogy that discussions that occur in cabinet are confidential and privileged. It would be considered a breach of confidentiality if a member who had attended a cabinet meeting divulged the discussions about various things. Members of the Labor Party frown on breaches of conversations held by members of the Labor caucus and members of the Liberal Party frown on breaches of conversations held in the Liberal Party room. That is frowned upon much more severely by members of the Labor Party than by members of the Liberal Party. The Labor Party does not have much time for members who breach privilege and the party's discipline is pretty ruthless, particularly when certain people are in charge. If the Corruption and Crime Commission had tapped the phones of members of Parliament and produced transcripts of our conversations with journalists, I suspect there would not be much ground to argue the toss if a member had been found to have breached information from either a cabinet discussion or a party room discussion. Sanctions would then follow, as Norm Marlborough found out when the CCC publicly revealed the conversations that he had had. That was pretty swift justice. That is valid given that we operate in a parliamentary sense, and obviously the political aspect also comes into play.

The definition of "deliberations" which the committee adopted and which has been used by committees for some time is contained on page 20 of the report and is referred to in recommendation 23. I am the first to agree that perhaps that definition is not totally universally understood or known by members. That is an area that we must address, which is why we have referred to it in our recommendations.

The committee did not use counsel assisting during the first round of hearings. However, as I said before, the CCC evidence became available to us and immediately exposed some discrepancies in the evidence provided during the first round of hearings. What were we to do about that? We could not just ignore it and say that it was extraneous to our committee, because it was not. It intimately involved the issues that we were seeking to find the truth about and, of course, it led to what was considered to be in most people's eyes a more serious situation whereby people were exposed as having provided false evidence. Right from the start the committee was confronted by witnesses using counsel. As I have said, some of those counsel are the best known legal names in St Georges Terrace. They rolled up to the committee hearings and provided advice to their clients before, during and after the hearings. The committee attracted many objections right from the start, which swallowed up a large amount of our time and research and involved the committee seeking a lot of advice to address those issues. The second round of hearings led to our findings and recommendations regarding the giving of false evidence, and it fully exposed the strategy behind the attempt to influence the legal proceedings in the Supreme Court. The committee felt that it needed a legal professional to ask questions on behalf of the chairman of the committee. I reiterate that the legal counsel assisting was not employed to do anything other than ask questions on behalf of the chairman, and he took no part in the committee's deliberations. We knew that the committee's engagement of Philip Urquhart would attract some objections. We also expected and received objections to the fact that Philip Urquhart was not only our legal counsel but also had previously been involved with the CCC. We sought advice on that right from the start, even before formally engaging him. We were comfortable in our own minds that we were not acting outside our jurisdiction.

I do not buy into the contention that the committee exceeded its powers, and therefore our findings and recommendations are contaminated. I admit that we made an unprecedented decision. In some respects it was a brave decision, but I am happy to wear it. We made that decision on the basis of what we were faced with. It was not made lightly, but I am comfortable with it in the scheme of things. We engaged counsel assisting on the best advice available to us at the time. That came principally from the former Clerk of the Legislative Council and other staff of the Legislative Council and involved invoking Erskine May's *Parliamentary Practice*, amongst others, as an authority. The decision was made on the basis that the privilege committee was able to determine its own procedure. The committee has the right to conduct proceedings as it sees fit, subject to the standing orders and the custom and usage of the house, including Erskine May. Erskine May makes a reference to counsel. We determined that all our guidelines for this decision were otherwise silent on the use of counsel assisting. While they did not explicitly say that we could use counsel assisting, they also did not say that we could not. Therefore, they were silent, and it was left to the discretion of the committee. We exercised our discretion. We considered that to be valid and the best method of achieving our goal, which was to find out what was at the bottom of all this. We also felt that it was important not to telegraph in advance the intention of the committee to use counsel by coming to the house to seek approval, as that would have made everybody aware of the existence of the CCC evidence and jeopardised our chances of getting honesty from witnesses and getting to the truth of the matter. That in turn would have mitigated the opportunity for collusion among witnesses and the possibility of compromised evidence.

Looking to the future, some very serious things that arise out of this report must be addressed by this Parliament, including the Legislative Council. That includes everything that will happen subsequently. The most immediate issue is what we do about the recommendations that the committee has put to the house. In the future we must determine what relationship this Parliament should have with the CCC. We must define that much more accurately. We must define that keeping in mind the importance this house being able to determine its own destiny. That is vital. If we give that away as a Parliament, we will be in a very serious situation. If the CCC has a role in conducting inquiries on behalf of the Parliament - we have already seen this in the other place where a privileges committee inquiry has been handed over to the CCC - I am not completely comfortable. If that is the way of the future, I suggest that at the very least the CCC needs someone to act as counsel for it, such as Peter Foss or Joe Berinson. They are former Attorneys General who understand both the Parliament and the CCC. There are a lot of very eminent lawyers around the place who unfortunately do not know very much about Parliament. They do not have very much respect for Parliament because they do not know very much about it. That was obviously put to us many times.

Some people have commented on the large number of findings about breaches and contempts. Some comment has been made that some breaches and contempts are more serious than others. That is true; however, the committee had no option but to find a breach or a contempt where it existed. There are precedents from previous privilege committees of this house. If the evidence suggested and exposed a breach, regardless of the size of the

breach or the seriousness of it, we had to report it. I agree that there are varying degrees of guilt, if we like, in terms of breaches. However, we did not have the liberty of defining that degree of seriousness in the findings. We had flexibility only regarding the subsequent penalties and recommendations.

Progress reported and leave granted to sit again, pursuant to standing orders.

House adjourned at 9.56 pm