

PROCEDURE AND PRIVILEGES COMMITTEE

*Second Report — “Misleading the House: Statements Made by the Member for Darling Range” — Adoption—
Amendment to Motion*

Resumed from an earlier stage of the sitting.

MR P.A. KATSAMBANIS (Hillarys) [7.00 pm]: In continuing my remarks, could I seek an extension?

The ACTING SPEAKER (Ms J.M. Freeman): It is an amendment; you cannot have an extension.

Mr P.A. KATSAMBANIS: As I was saying before I was rudely interrupted by question time, the options here are very clear. The Procedure and Privileges Committee, the most senior committee in this Parliament, has found a series of breaches of parliamentary procedure and contempt of Parliament by a member of Parliament. It has also found a whole heap of issues that may not directly relate to Parliament but may constitute criminal activity. That part of it—the criminal activity that does not relate to Parliament—will be properly dealt with by the investigation initiated by the Commissioner of Police and to be conducted by the major fraud squad. We support that 100 per cent. However, that leaves a gap, because the former member can escape scrutiny and can escape proper and thorough investigation of his misleading of the house and his contempt of Parliament and the intersection —

Dr A.D. Buti interjected.

The SPEAKER: Member for Armadale!

Mr P.A. KATSAMBANIS: You can have your go when you get up and speak! I will not be taking interjections, Mr Speaker.

Dr A.D. Buti: Do you support the report? You won't say, will you?

The SPEAKER: Member for Armadale, I call you to order for the first time.

Mr P.A. KATSAMBANIS: To avoid any doubt —

Dr A.D. Buti interjected.

Mr P.A. KATSAMBANIS: Mr Speaker?

The SPEAKER: Member for Armadale, I call you to order for the second time.

Mr P.A. KATSAMBANIS: Thank you, Mr Speaker. I have limited time.

To avoid any doubt, we support the report, we support the findings of the Procedure and Privileges Committee, and we support the Commissioner of Police's investigation. What we are calling for, and what the Premier has suggested he has done but will not have done unless he supports this motion, is that the full force of the law be brought against this former member who has disgraced himself, disgraced the Parliament, misled the Parliament and committed contempt of Parliament. That can be done only if the Attorney General initiates an investigation under section 57 of the Criminal Code, which, I remind the house, carries a penalty of up to seven years' imprisonment, and this investigation is conducted. We are not asking the Attorney General to initiate prosecution, although he can if he wants to. We are just asking him to investigate and report back to the house. We cannot be fairer than that. We cannot be clearer than that. We cannot be more transparent than that. The government will show its colours if it supports this motion or not.

MR J.R. QUIGLEY (Butler — Attorney General) [7.04 pm]: Firstly, on the original motion, I condemn the member for Darling Range for that which he has done and I join all members of the chamber, the committee, and yourself, Mr Speaker, in condemnation of that conduct. I do not want to go further into that because I think we are all at one on that.

I want to address the amendment itself. I do not want my comments on the amendment to be read as meaning that the member ought not be prosecuted for an offence under section 57 of the Criminal Code, but rather to strictly follow the legislative requirements of enactments that have been passed by Parliament and the standing orders of this Parliament. The member for Scarborough posed the question: “What we want to know from the Attorney General is whether section 57 is relevant.” That is not what the amendment states —

that the Attorney General report to the house within two sitting weeks whether he is of the opinion that there are reasonable grounds for securing a conviction against the former member for Darling Range under section 57 of the Criminal Code.

It gives me a direction to do that.

Section 15 of the Parliamentary Privileges Act 1891 is not in those terms. It is not that the chamber can direct me to obtain an opinion. It shall be lawful for either house to direct the Attorney General to prosecute, but not to obtain an opinion. The amendment as framed is ultra vires vis-à-vis section 15 of the Parliamentary Privileges Act. The second paragraph of amendment states —

if the Attorney General is not satisfied that there are reasonable grounds for securing a conviction, to advise the house of the reasons why.

That is not contemplated by section 15. Section 15 empowers this chamber to give the Attorney General of the day a direction to commence the prosecution. The Leader of the Nationals WA said that the motion is basically seeking advice from the Attorney General. It is not contemplated in section 15 of the Parliamentary Privileges Act. There is concern that this person, who is no longer a member of this chamber, will slip through the cracks in terms of section 57 of the Criminal Code for giving false evidence before the Parliament. I would say to members: “Slowly, slowly, catch a monkey.” We have to have regard to the other legislation passed by this honourable house and this Parliament.

The matter of Mr Smith has been raised. It was before the Council on 10 May 1990.

The SPEAKER: Minister for Water, acknowledge the Chair when you pass someone on their feet, please.

Mr J.R. QUIGLEY: I remember that matter because I was practising law and I know Mr Smith because I represented his co-accused. On behalf of a Mr Dempster, he had tapped the telephone of someone criticising Mr Dempster’s issuing of a subsequent issue of shares concerning the casino. He was convicted in the courts of that telephone intercept after having giving evidence before this Parliament that he had not. They were relying on what had happened in the courts. At the time, the Attorney General was Hon Joe Berinson. He agreed to the motion that had been put because at that time the Attorney General had the power to commence a prosecution. I will refer to that matter again soon, but subsequent to it taking place, in 1991 this Parliament passed the Director of Public Prosecutions Act 1991. Section 11 of that act provides in part —

- (1) It is a function of the Director —
 - (a) to commence and conduct the prosecution of any offence, whether indictable or not, and whether on indictment or not; and
 - (b) at any stage of the proceedings, to take over a prosecution commenced by another person of an offence, whether indictable or not, and whether on indictment or not.
- (2) The function under subsection (1) may be performed despite any other written law that ...

The last word of the Parliament on who can commence a prosecution is to be found in 1991. That impacts on section 15 of the Parliamentary Privileges Act, which was passed a century before in 1891. Section 20 of the Director of Public Prosecutions Act 1991 states in part —

- (1) The Director has the power to do all things that are necessary or convenient to be done for the purpose of performing the functions of the Director.
- (2) Without limiting subsection (1), the Director may for the purpose referred to in that subsection —
 - (a) exercise any power, authority or discretion relating to the investigation and prosecution of offences that is vested in the Attorney General, whether by written law or otherwise; ...

The Parliament has specifically legislated that the Director of Public Prosecutions has all the powers to direct the investigation and prosecution of any person in Western Australia for any offence. That is not the end of it. I will not go through every section of the DPP Act 1991. However, I want to refer to part 4 of the act, which is highly relevant in these circumstances. Section 27 of part 4 is headed “Directions by Attorney General”. It states in part —

- (1) The Attorney General may, after consultation with the Director, issue the Director directions as to the general policy to be followed in the performance of any function of the Director.

The next subsection is very important. It states —

- (2) A direction may not be issued under subsection (1) in respect of a particular case.

That means that I, as Attorney General, am statute-barrred from giving the Director of Public Prosecutions, Amanda Forrester, SC, a direction about a prosecution or about the way in which she can direct the police on an investigation. Section 27 continues —

- (3) The Director may —
 - (a) in respect of any function, request the Attorney General to issue directions under subsection (1) concerning that function;
 - (b) in respect of any particular case, request the Attorney general to issue directions to the Director as to the performance of the Director’s functions in that case;

That is when the director comes to the Attorney General seeking a direction —

- (c) if the Director considers that the interests of justice require that the Director should not perform a function in a particular case, request the Attorney General to perform the corresponding function of the Attorney General in that case, ...

I am not trying to let anyone slip through the cracks here. However, as Attorney General, I must comply strictly with the law passed by this Parliament. The law of Western Australia is that the person who has sole authority for instituting a prosecution—unlike in the case of Smith, or back in 1891—is the Director of Public Prosecutions. The director also has the function of directing an investigation.

My prayer to this house is that it does not pass this amendment tonight and that it does not put me in a situation of irrevocable conflict. As Attorney General I do not want to be disobedient to any direction of this house, but if the motion passes I could find myself in disobedience of the functions of Attorney General vis-a-vis the Director of Public Prosecutions Act 1991.

There are a couple of other difficulties with the whole proposition of prosecuting the member, but they are not insurmountable. I respond to the member for Hillarys, who said that the report also included criminal acts that extend beyond the scope of misleading the Parliament. The member for Hillarys said that this letter in its terms does not embrace the possibility that the member has committed an offence against section 57 of the Criminal Code. As Attorney General, I am certainly within power to write to the Commissioner of Police—as I will do—and point out this house’s concern that the police should also have in mind section 57 of the Criminal Code, and to discuss that with the Director of Public Prosecutions.

My humble prayer to this house, however, is that I am not directed by this chamber to do that which I am forbidden to do by the Director of Public Prosecutions Act. Although I am sure there are some members in this chamber who would like to see me finish as Attorney General sooner rather than later, I would not imagine they would want to see me being taken out of here in handcuffs for breaking the law!

On a practical note, I will allude to a couple of matters concerning the prosecution which I should imagine will impact upon the Director of Public Prosecutions’ concerns. I refer to the Smith case, and I am now looking at the twenty-ninth report of the Legislative Council Standing Committee on Procedure and Privileges, delivered in May 2014. It noted, at paragraph 6.13, that —

... the inclusion of the contempt provisions in ss 55 to 59 of the Code raises difficulties when determining the extent to which the approval or consent of the Parliament is required to release House or committee transcripts or evidence for the successful prosecution of these offences in the courts.

This committee was chaired by Hon Barry House, MLC. The committee also noted at paragraph 6.19 that the mere inclusion of those offences in the Criminal Code does not abrogate parliamentary privilege. It states —

“... *that the legislature does not intend to abrogate a common law right or privilege unless a contrary intention is clearly expressed or implied in statute.*”

There is a recommendation that was never taken up that these sections be amended to include the abrogation of the privilege, to open it up. Members will hopefully understand that it is not as easy as going down to the Supreme Court or the District Court or wherever the indictment is presented and simply tendering the report we have here, or, for that matter, tendering the transcripts of the committee. It requires evidence to be given in front of a jury. In the Smith case, the Legislative Council gave specific leave. I refer now to the forty-fourth report of the Legislative Council Standing Committee on Procedure and Privileges, delivered in 2016, and also chaired by Hon Barry House. The report notes, at paragraph 8.50 —

There is a precedent for this action by the Legislative Council in *R v Smith* (1991)

...

On that occasion the Legislative Council resolved that the Attorney General be directed to prosecute an apparent instance of giving false testimony to a parliamentary committee ...

I have already referred to the inhibition of my capacity to do that. The paragraph continues —

The Legislative Council granted leave for the Chief *Hansard* Reporter to attend the subsequent District Court trial to authenticate relevant *Hansard* transcripts and for four Members of the Legislative Council to attend trial to give evidence of what had occurred during the committee process.

A prosecution brought under section 57 of the Criminal Code, for giving false evidence, would require evidence to be given before the jury by you, Mr Speaker, and each member of the committee would have to take the oath and be examined and cross-examined. This is another problem with the contemplated requirement in the amendment of me supplying the house with my opinion within two sitting weeks, because it would require this

chamber to debate who is to go to the court in the event of a prosecution and what matters have to be released in way of the transcript. It is not an easy matter. The other difficulty is, and I am not saying that any of this is —

Mr D.T. Redman: You run a very compelling argument and you have the resources. You undertook to write a letter to the —

Mr J.R. QUIGLEY: Commissioner of Police.

Mr D.T. Redman: — Commissioner of Police. Will you undertake to table that letter when that happens?

Mr J.R. QUIGLEY: I would not answer that on the run. It is private correspondence between me and the commissioner. Can I just take that on notice and inform you of that?

Dr M.D. Nahan: In the case of 1990, with Mr Smith, the Attorney General at the time, Mr Berinson, had six days to respond.

Mr J.R. QUIGLEY: Correct.

Dr M.D. Nahan: He did so within six days.

Mr J.R. QUIGLEY: Correct. One of the difficulties here, Leader of the Opposition, is that a lot of this evidence that the committee relied upon was sourced from the United Kingdom and that requires depositions to be taken in a format that is compliant with the Criminal Procedure Act for prosecutions in a court of superior jurisdiction. I should imagine that that would take a lot longer. In Smith's case we were dealing with transcripts of evidence of a conviction that happened at a local court, and all the witnesses were local. To prove the forgery, it might be necessary to bring someone out from the United Kingdom. That is not insurmountable, because we have provisions for the taking of evidence through videoconferencing, and that is not unheard of in the Supreme Court either. That could happen. These things are not insurmountable, but in the time frame contemplated by the amendment—I appreciate that members may not have particular familiarity with these sections and I am not being critical of any member—it would be next to impossible, even if I did have the power, to conclude this. I just repeat: slowly, slowly catch a monkey. These things have to be worked through. There has to be an investigation. What the police do after they have completed their investigation is much what they do in many serious cases. In the Macro case, for example, they gathered their evidence and then they conferred with the DPP to take its opinion as to whether there were reasonable prospects of securing a conviction—the very thing the chamber could, if the vote goes the wrong way, direct me to do here this evening. I am not being party political here, but I think it would be unfortunate for any Attorney General in this chamber to be given a direction by the chamber to do something that another statute forbids the Attorney General from doing. I want to be helpful to the chamber, so I want to write to the Commissioner of Police and draw his attention to the fact that the concerns of members of this house run further than just the forged document and run to the quality of the evidence given before the committee, and ask the commissioner to investigate that. I think that will require him to communicate with the Speaker. I do not think I can get an extension.

The SPEAKER: No, you cannot.

Amendment put and negated.

Motion Resumed

MR Z.R.F. KIRKUP (Dawesville) [7.25 pm]: On behalf of the opposition, I would like to make a contribution to the substantive motion. At the outset I thank the committee for its work. I think what we have dealt with tonight, yesterday and over the months leading up to this has been quite concerning for a number of us here. It is clear this was a thorough investigation, and although there was no direct interaction on this matter, it was very clear from the outcome that this result weighed heavily on the minds of those who produced the report.

I think we will look back on the “Urban affair”, as it was, as one of those events that will be a defining moment of this Parliament. What we saw play out in *The West Australian*, and articles largely written by Gary Adshead in the media, extremely disappointed me, and the report of the Procedure and Privileges Committee has made me angry. It made me angry because I think many in this place—certainly those on the other side—thought that the former member for Darling Range was a good man. The interactions I had with him while he was here, before we got into the weeds of this, were really good. Like many of the relationships I have with members opposite, they were polite and in quite good spirits. I would consider it a very good association. I cannot underscore enough the anger that I felt seeing this play out in the media, and what was confirmed by the Procedure and Privileges Committee report resonates greatly within me. It is exceptionally, exceptionally disappointing to see that he misled each and every one of us at every turn. It made me angry to see the damage that has been wreaked across this chamber, the institution of the Parliament of Western Australia and across the community more broadly. Since the allegations first aired in *The West Australian*, I think every response by the former member for Darling Range has been found wanting. The lack of contrition and apology, excepting of what happened yesterday, underscored it even more so for me. At no point in time was there any sense of contrition or sorrow for what occurred. It was a historic moment

in this chamber—the history of Parliaments in Australia—to see a Procedure and Privileges Committee recommend an expulsion from this chamber. It is significant and momentous. I am angry to have been treated, much like the rest of this chamber, with such contempt by Mr Urban.

It was equally disappointing to see the government treat this place with considerable contempt. We in this place were asked within a matter of hours to consider a very detailed report of some significant length, and then vote on a decision to expel the member from this place. Irrespective of his resignation, we were also asked to expel him of his privileges. To me, the government was asking the Parliament of Western Australia and the members of this chamber to undertake a historic action. For the government initially to give us a matter of hours was very disappointing and illustrative of the contempt I think those opposite seem to have in this place when it comes to important matters like this. This was a seriously historic moment in our time, and the very fact that the committee's recommendations were to be very quickly almost rubberstamped by this chamber as an expectation of the government shows the absolute contempt it has for the procedures of this place.

Mr D.A. Templeman: That's not true.

Mr Z.R.F. KIRKUP: It is absolutely true, member for Mandurah. Indeed the work done by the Procedure and Privileges Committee —

Mr D.A. Templeman: The matter was raised, and then it was deferred.

Mr Z.R.F. KIRKUP: The matter was initially put to us by the government to be voted on in a matter of minutes.

Mr D.A. Templeman: Your contriteness is amazing. It is remarkable!

Mr Z.R.F. KIRKUP: This is, though, typical of this government, and typical of the contempt the government has for this place at times, without care or the dignity of this institution. It is beneath, I think, the conduct of members in this place, and it certainly treats the Procedure and Privileges Committee's extensive report with disdain to have assumed so quickly that this chamber would have voted on it in a matter of minutes after it was presented. I think that is a disappointing outcome for the government that this decision would rest on the shoulders of every single member of this place. To vote on a matter like that so soon shows the contempt that the government has on a matter such as this. It is the reality that the Western Australian Labor Party led a stranger into this place, yet we were not given the opportunity to seriously consider this matter.

Mr D.A. Templeman: A stranger?

Mr Z.R.F. KIRKUP: Absolutely. He was a stranger in this place. He was a man who misrepresented himself in every way, shape and form.

Mr D.A. Templeman: Submit your resume.

Mr Z.R.F. KIRKUP: I think the information on my resume is quite public, as is that of every single person here; it is on the biographical register.

Mr P. Papalia: Are the member for Churchlands' medals real? Have you checked?

Mr Z.R.F. KIRKUP: That is a grievous assertion from the junior minister.

Mr D.A. Templeman: You could have shown some distinction here, and you haven't. You have virtually got down in the gutter.

The SPEAKER: It is a very interesting debate, Leader of the House, but I do not want to hear it. I call you to order for the first time.

Mr Z.R.F. KIRKUP: I appreciate the comments from the member for Mandurah, as always, but the reality is that when these issues were first raised with the government, at every point the government sought to deploy methods that obfuscated what was going on here. Even when the matter was first raised, the journalists were told, "There's nothing to see here. Don't worry about it. There's nothing wrong." No effort was put into trying to ascertain whether that assertion was correct. The Premier admitted that the resources of the Western Australian government were on offer to ensure effectively that the former member for Darling Range would evade interrogation and question, and then at some point that just stopped for no apparent reason. It is still not clear to me why that is the case. I think the Premier should stand condemned for his conduct.

Mr P. Papalia: For referring him to the privileges committee? You are a fool.

Mr Z.R.F. KIRKUP: The minister says that the Premier —

Several members interjected.

The SPEAKER: Members, you had your opportunity to speak in silence. I will give the member on his feet the opportunity to speak in silence.

Mr Z.R.F. KIRKUP: The Minister for Tourism points out that the Premier referred the former member for Darling Range to the privileges committee. In fact, the government first voted down a motion from this side to ensure that that referral took place in the first instance. The government voted against it and then within a day moved a motion to refer him to the privileges committee. I think that shows it is a politically expedient situation for those opposite, indeed for this Premier, who cares only for his own —

Mr P. Papalia interjected.

Mr Z.R.F. KIRKUP: Minister for Tourism, if there was some concern about the former member for Darling Range, you would have wanted to ensure that the Procedure and Privileges Committee saw to that quickly.

Mr P. Papalia interjected.

The SPEAKER: Minister for Tourism.

Mr Z.R.F. KIRKUP: But instead you chose to vote down a motion from this side, wait and then try to put it in a manner that was politically expedient —

The SPEAKER: Member, through the Chair please.

Mr Z.R.F. KIRKUP: — and move a motion of referral yourselves.

It is typical of that government to try to ensure that at every point it arrives at a political high point that is only in the interests of protecting the reputation of the Premier. That is why the government voted down our amendment and then voted for its own. There could be no doubt that what happened in this place with the former member for Darling Range is absolutely of his doing and absolutely his own fault. I do not believe that at any point this government was open and accountable and acted with integrity in this matter. At no point when the questions were first raised did it thoroughly investigate it. It simply said, “There is nothing to see here.” When this developed even more—when this side had significant reservations about the issues surrounding the member for Darling Range—it voted against the motion of referral to the Procedure and Privileges Committee again.

A member interjected.

Mr Z.R.F. KIRKUP: The government referred it after voting down ours, member for Southern River out of your chair. Again, it is only because it is politically expedient for you to do so.

The member for Mandurah makes the point that it is awful for the opposition to get down in the gutter on politics on this. The reality is that at every point on this matter the government acted in a manner that was politically expedient for itself.

Several members interjected.

Mr Z.R.F. KIRKUP: I have explained why. It seems to me that with the continued contempt that the government has for this place, which culminated in a motion to ensure that we would vote on the Procedure and Privileges Committee’s second report to this place within a matter of hours of it being presented, shows that it prioritises its own political reputation rather than the institution we serve here today.

I cannot believe that the government would try to tarnish us and seek to ensure that we are the ones who act in a political, and as it says, “in the gutter” manner, when in reality that is exactly how this government operated in this matter at every point in time. The former member for Darling Range absolutely should have acted in a manner far better than he has done to get us to this point, but this government is as much a part of this sordid tale as he is. The people of Darling Range deserved better from their Western Australian Labor Party representative. They deserved better from Barry Urban, as did all members in this place, as did I and all here who thought he was a good person who sat in that chair. But moreover, the people of Western Australia deserve better from a government like this that seeks to ensure that at every point in time it is as politically expedient as possible.

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [7.35 pm] — in reply: I would like to close the debate. Earlier this week, as we are all aware, a report was handed down titled, “Misleading the House: Statements Made by the Member for Darling Range”. It is disappointing that the debate concluded with that performance by the member for Dawesville, quite frankly. I thought he was better than that. The facts of the matter are that this report was presented to the house. There are a series of very serious findings that are also accompanied by eight recommendations including, of course, the particularly historic recommendation, recommendation 7, which called upon or recommended to the Legislative Assembly the expulsion of the member for Darling Range. As we know, post the tabling or the presentation of the report, the member for Darling Range resigned from this place. This motion that I moved earlier today seeks to endorse the recommendations of the standing committee and also seeks to revoke any privileges that may be attributed to a former member, highlighting the severity of this particular matter. This is a historic occasion, an unfortunate historic occasion, in the Parliament of

Extract from *Hansard*

[ASSEMBLY — Wednesday, 9 May 2018]

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Mr Peter Katsambanis; Mr John Quigley; Mr Zak Kirkup; Mr David Templeman

Western Australia and indeed, one would hope that in the debate of this, appropriate questions and comments would be made as have been by most members who have contributed to the debate.

I acknowledge the opposition's decision to effectively withdraw or not proceed with the amendment that it moved as part of the substantive motion earlier today. I think that was because the Attorney General highlighted very clearly the constraints upon him had that amendment to the motion been carried. I appreciate the opposition's understanding and actions in not pursuing that because that was a sensible and appropriate action. I acknowledge that the member for Warren–Blackwood in his interjection earlier this evening said that the explanation by the Attorney General had in many respects convinced him that the procedure or following the intent of the amendment would not be the appropriate line. I thank the opposition for doing that.

We have before us a motion that will be recorded as this house acknowledging and endorsing the recommendations made by the Procedure and Privileges Committee and as I said, the second part of the motion revokes any privileges that the former member would have as a former member of this place. I think that is appropriate and that all of us can learn from this experience—all of us should learn from this experience—but that it should be done in a respectful way. I ask members to endorse this motion.

Question put and passed.

House adjourned at 7.39 pm
