MR M.W. SUTHERLAND: The Procedure and Privileges Committee has undertaken a number of investigations relating to potential or actual breaches of privilege and contempt of Parliament in recent years. Because such investigations may initially, or at some time, involve accusations against individuals, it is important that to the extent possible, procedural fairness is followed in relation to witnesses appearing before the PPC in such investigations. As the PPC has undertaken no investigations recently, it was timely to review the procedures of committees of the house in relation to investigations involving persons who are considered to have committed a significant wrongdoing, to determine whether there were procedures that could be improved or adopted to address matters of procedural fairness.

Procedural fairness in relation to adversarial court proceedings describes the conditions desirable for an investigation to have a fair outcome. These conditions include: adequate notice being given to accused persons; only relevant matters to be considered in investigations; decision making being unbiased and acting in good faith; and the opportunity for an accused to respond. Such considerations are particularly important issues for privileges committees, and indeed for other committees, when accusations are made against individuals or organisations. While standing and select committees are not usually placed in a position of recommending penalties in relation to individuals or organisations, the publicity associated with their inquiries and recommendations can have a significant effect on individuals and organisations. Nevertheless, of all the committees, these issues are most frequently brought to light by the PPC, which investigates members of Parliament and members of the public in relation to contempt, often in highly publicised circumstances.

It is also important to consider the penalties the house has, or should have, to defend itself against conduct that undermines the proper exercise of the house’s legislative and other functions. The current range of penalties available to the house is determined by the Parliamentary Privileges Act 1891, standing orders and precedent. As noted by a Legislative Council select committee on privileges in 2007, these penalties include: the imposition of a fine; suspension as part of the house’s inherent ability to regulate and discipline its own membership; expulsion; reprimand and admonition; censure; imprisonment; seeking an apology; and exclusion from the precincts of Parliament.

The Legislative Assembly is currently limited in its ability to impose a penalty by way of a fine. Standing order 55 provides that if a person is declared guilty of contempt for an offence specified in section 8 of the Parliamentary Privileges Act 1891, they may be fined a penalty of such amount as the Legislative Assembly orders, and if the fine is not immediately paid, the offender may be imprisoned in the custody of the Sergeant-at-Arms in such place within the state as the Legislative Assembly directs until the fine is paid or until the end of the then existing session or such lesser period as the Legislative Assembly orders.

If the contempt is one described in section 8 of the Parliamentary Privileges Act 1891, the house is limited by standing order 56 to impose a fine not exceeding $100. This is clearly an inadequate sum. Professors Geoffrey Lindell and Gerard Carney wrote a paper in 2007 for the House of Representatives Standing Committee of Privileges and Members’ Interests, in which they considered procedural fairness and other matters concerning the powers of the house in relation to penalties for contempt. The paper contained a series of recommendations to the privileges committee, and in November 2009 the House of Representatives adopted a suite of procedures for witnesses appearing before the Standing Committee of Privileges and Members’ Interests, based on Lindell and Carney’s recommendations.

In this report, the PPC has provided its own commentary on Lindell and Carney’s recommendations in relation to the examination of witnesses before privileges committees. After meeting with the House of Representatives Standing Committee of Privileges and Members’ Interests, the Parliament of New South Wales Standing Committee on Parliamentary Privilege and Ethics of the Legislative Assembly and the Privileges Committee of the Legislative Council, the committee discussed relevant issues with Mr Bret Walker SC and Professor Greg Craven and considered Lindell and Carney’s paper. It then made several recommendations to the house —

Recommendation 1
That in the event of specific allegations being made against a person in the course of a committee inquiry, all Legislative Assembly committees will notify persons who are significantly adversely referred to of those references at a time the committee deems appropriate.

**Recommendation 2**
That in the event of specific allegations being made against a person, all Legislative Assembly committees allow a person a reasonable time to prepare their response.

**Recommendation 3**
That if a person is considered to have committed a significant wrongdoing, they should be made aware of relevant public proceedings in good time.

**Recommendation 4**
That if a person is the subject of significant adverse findings, a committee will provide a copy of the relevant draft findings and allow a person a reasonable period to respond to those findings.

**Recommendation 5**
That a person be given the opportunity to address a committee on any proposed penalty.

**Recommendation 6**
That the Speaker’s Procedural Rules be amended to include the recommendations above, and be adopted by the House in the form set out in Appendix Three.

**Recommendation 7**
That the following should be adopted as Standing Order 57(1):

**Consideration of report containing findings of contempt**

57. (1) Unless the House otherwise resolves, there will be at least two days, including the day of tabling, between the presentation of a Procedure and Privileges Committee report containing recommendations for findings of contempt and the consideration of that report in the House.

**Recommendation 8**
That the following should be adopted as Standing Order 57(2):

**Response to recommended findings of contempt**

57. (2) If the Procedure and Privileges Committee recommends to the House that a person is found guilty of contempt or breach of privilege, that person should have the opportunity to provide a written statement to the Speaker for presentation to the House if the Speaker is satisfied the content is relevant, and is not vexatious or offensive.

**Recommendation 9**
That Standing Order 267 (1) be amended to read:

**Examination of witnesses and adverse references**

267. (1) The examination of witnesses by a committee and the processes for dealing with adverse references by a committee will follow the procedural rules determined by the Speaker from time to time.

**Recommendation 10**
That the *Parliamentary Privileges Act 1891* be amended to reflect generally section 7 of the *Parliamentary Privileges Act 1987 (Cth)*, in particular to establish a better regime for the Legislative Assembly to impose a fine on natural persons and corporations for offences against the House, and to retain and define the power to imprison.

The committee wishes to record its thanks to the Standing Committee of Privileges and Members’ Interests at the House of Representatives; the Parliament of New South Wales’ Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics; and the Procedure and Privileges Committee of the Legislative Council in Western Australia; and Mr Brett Walker, SC, and Professor Greg Craven for their valuable opinions and insights into contempt, procedural fairness and other relevant matters.

I commend the report to the house.
Contempt of the house is an unusual subject and not one that is very well known by people outside Parliament; it is not very well known by people within Parliament and certainly ordinary Western Australian citizens do not understand or even know about the subject. If any member of this house spoke to citizens in their electorates, informing them that Parliament had the power to imprison people, they would probably not be believed. However, Parliament has that power under the contempt procedures that govern parliamentary privilege and the powers vested in the Procedure and Privileges Committee in Western Australia.

The member for Mount Lawley referred to a paper written by Professors Lindell and Carney and presented to the House of Representatives in 2007. That discussion paper was picked up by the House of Reps. A further paper emanated from the Standing Committee of Privileges and Members’ Interests—as it is known in federal Parliament—in 2008, and a number of Lindell and Carney’s recommendations were adopted by the House of Reps in September 2009. It then really befall the Procedure and Privileges Committee in Western Australia to examine that paper and the recommendations picked up by the House of Reps to see whether it was appropriate for Western Australia to adopt those recommendations.

In this report, the Procedure and Privileges Committee advises the house about the Lindell and Carney recommendations adopted by the House of Reps and indicates which of those recommendations should be adopted here in Western Australia. Primarily, those eight recommendations go to procedural fairness for people brought before the Procedure and Privileges Committee. That procedural fairness applies to not only ordinary citizens of Western Australia, but also all members of Parliament, who may be brought before the committee. In their paper, Lindell and Carney argued and recommended that parliamentary privileges and procedures committees should work far more like a court works; that the powers of such committees and their procedures should be codified; that the rights of the people coming before the committee should be codified; and, that when it comes to the application of penalties against persons found guilty of contempt, parliaments should not impose those penalties, particularly penalties involving imprisonment. Lindell and Carney believe that that power should be taken away from parliaments and handed to the courts which, in their view, have the experience, the authority and the processes in place to deal with contempt, particularly when a guilty finding leads to a term of imprisonment. The basis of Lindell and Carney’s argument was that the powers of Parliament to discipline, fine and imprison people should be handed over to the courts.

In reading Lindell and Carney’s paper one could assume that that is exactly what the House of Reps adopted in October 2009. I was very grateful that the Procedure and Privileges Committee chose to visit Canberra to talk to the privileges committee in Canberra about the recommendations it picked up out of the Lindell and Carney paper. We also visited the New South Wales Legislative Assembly and spoke to numerous people in the New South Wales Parliament about its powers, or lack thereof, because they do not have the powers that we have in Western Australia, by way of historical fact. Nevertheless, we had an interesting conversation about how the New South Wales Parliament deals with issues of contempt. From these conversations in Canberra and Sydney, the committee adduced that Canberra had very clearly not picked up all of the Lindell and Carney recommendations. They certainly had not picked up the recommendation to give away the power to imprison; in fact, these other jurisdictions strongly argued the case that Western Australia should not consider doing so either. At the end of the day, Parliament is the independent legislative governing body for the state, and, in Canberra’s case, for the country. There has to be a real authority expressed by Parliament if it is to be treated in a right, proper and respectful way by all in society. Maintaining our power to declare contempt and our power to punish for a finding of contempt is the way to ensure that that respect remains. The committees in Canberra and New South Wales were very insistent that we do not give that power away.

What have we picked up out of the Lindell and Carney paper and what have we picked up as a result of our discussions with our brother committees in Canberra and New South Wales? The member for Mount Lawley has referred to all 10 recommendations. Members will see that recommendations 1 to 7 effectively suggest an appropriate way to deal with people who come before the committee, regardless of whether the person before the committee is a parliamentarian or an ordinary citizen of Western Australia. The recommendations deal basically with how those people who come before the committee can receive procedural fairness; how they have the right to express themselves, even when a contempt charge may be found against them; how they can be given an opportunity to express their views about the contempt proceedings; and how they should present themselves before the committee.

There is one further provision, apart from procedural fairness, that the committee recommends the house adopt—that is, the ability of the house to impose a fine on people who are found guilty of contempt. That power does not exist at the moment. There are powers to require an apology to the house; there are powers to imprison—those powers have been used, as people have been imprisoned by the Western Australian Parliament; and there are...
powers for an apology to be given, as I indicated earlier. However, there is no power to fine. That was one recommendation that was also put to us by the committee in Canberra.

The committee, therefore, picked up some of the recommendations of the Lindell and Carney paper. We have framed those recommendations in a way that reflects our visits to the Canberra and New South Wales Parliaments, and in a way that deals with contempt proceedings in those Parliaments. I recommend to the house that the report be adopted.