



PROCEDURE AND PRIVILEGES COMMITTEE

**COMMENTS MADE BY THE
MEMBER FOR CANNINGTON**

**Report No. 10
in the 38th Parliament**

2010

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Procedure and Privileges Committee

Comments Made by the Member for Cannington

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PROCEDURE AND PRIVILEGES COMMITTEE

COMMENTS MADE BY THE MEMBER FOR CANNINGTON

Report No. 10

Presented by:
Mr Michael Sutherland, MLA
Deputy Speaker of the Legislative Assembly
Laid on the Table of the Legislative Assembly
on 19 October 2010

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TABLE OF CONTENTS

COMMITTEE MEMBERS	i
COMMITTEE STAFF	i
COMMITTEE ADDRESS	i
COMMITTEE'S FUNCTIONS AND POWERS	v
Procedure and Privileges Committee.....	v
INQUIRY TERMS OF REFERENCE	vii
FINDINGS	ix
RECOMMENDATION	xi
COMMENTS MADE BY THE MEMBER FOR CANNINGTON.....	1
BACKGROUND.....	1
SCOPE OF THE INQUIRY	2
CONDUCT OF THE INQUIRY	4
SUMMARY OF EVIDENCE.....	4
APPENDIX ONE.....	9
VERBATIM TRANSCRIPT — EXTRACT FROM PROCEEDINGS IN THE LEGISLATIVE ASSEMBLY ON 16 SEPTEMBER 2010	9
APPENDIX TWO.....	11
HANSARD DUPLICATE MARKED WITH REQUESTED CORRECTIONS	11
APPENDIX THREE	13
HEARINGS.....	13

COMMITTEE'S FUNCTIONS AND POWERS

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee —

Procedure and Privileges Committee

- 284.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament to —
- (a) examine and report on the procedures of the Assembly; and
 - (b) examine and report on issues of privilege; and
 - (c) wherever necessary, confer with a similar committee of the Council.
- (2) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

INQUIRY TERMS OF REFERENCE

That this House refers the comments made by the Member for Cannington in this House on 16 September 2010 that —

The Member for Wanneroo can explain himself, and other members can explain why they have had their names expunged from the Corruption and Crime Commission's records

to the Procedure and Privileges Committee to —

- (1) advise the House whether or not such comments amount to a breach of parliamentary privilege or otherwise unparliamentary conduct; and
- (2) report to the Assembly at the earliest possible opportunity, but no later than 21 October 2010.

FINDINGS

Page 8

Finding 1

Amongst a range of possibilities, it is open to conclude that where *Hansard* records the Member for Cannington as saying:

The Member for Wanneroo can explain himself, and other members can explain why they have had their names expunged from the CCC's records

he may have been referring in the first part to certain activities of the Member for Wanneroo and then disjunctively to another member who had his name suppressed in the records of the Corruption and Crime Commission.

Page 8

Finding 2

The Member for Cannington had evidence for the comments he made in the House that a member had at an earlier time had his name suppressed in Corruption and Crime Commission records.

Page 8

Finding 3

The Member for Cannington's comments did not amount to 'otherwise unparliamentary conduct'.

RECOMMENDATION

Page 8

Recommendation

Your Committee recommends —

That the House take no further action in relation to the matter.

COMMENTS MADE BY THE MEMBER FOR CANNINGTON

Background

On 16 September 2010 during debate on the Police Amendment Bill 2010 *Hansard* records the Member for Cannington as making the following observations in the Legislative Assembly:

Members opposite have had their names expunged from the Corruption and Crime Commission's records

and later

*The member for Wanneroo can explain himself, and other members can explain why they have had their names expunged from the CCC's records.*¹

On 23 September the Member for Jandakot referred these comments to the Attorney General during Questions without Notice with the following query: 'Given the seriousness of these comments, can the Attorney General explain to the House exactly what the Member for Cannington has implied?'² The Attorney General responded that:

*That is a very specific allegation against the Member for Wanneroo as an individual, and also against other members on this side of the House whom the Member for Cannington was not bold enough to name.*³

The Attorney General continued that the Government was offering the Member for Cannington 'the opportunity to explain or withdraw',⁴ but if he chose not to do so, the suggestion of the Leader of the Opposition that Standing Orders be suspended after Questions without Notice that day so that the comments could be canvassed, might be the 'appropriate one'.⁵ At the conclusion of Questions without Notice, the Member for Cannington made the following personal explanation:

I rise under Standing Order 148 to make a personal explanation. In question time the Attorney General made allegations against me. On 16 September I referred to matters relating to the Member for Wanneroo, and separately to another member of the Liberal Party in relation to the Corruption and Crime Commission. The second member I referred to in relation to the CCC was the Member for Carine, not the Member for Wanneroo. In

¹ Mr W.J. Johnston, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 16 September 2010, p. 6825.

² Mr J.M. Francis, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 September 2010, p. 7268.

³ Hon C.C. Porter, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 September 2010, p. 7269.

⁴ Ibid.

⁵ Ibid.

*the transcript of the CCC on 7 December 2004 in relation to improper conduct of the City of Stirling a witness mentioned receiving ballot papers from the Member for Carine. The member's name was subsequently removed and is no longer on the CCC's website. I corrected the Hansard at the time and am surprised that the permanent record of Hansard does not show the correction I made to the Hansard.*⁶

Following this personal explanation, the Leader of the House moved a suspension of Standing Orders to enable the following motion to be moved forthwith:

That this House refers the comments made by the Member for Cannington in this House on 16 September 2010 that —

The Member for Wanneroo can explain himself, and other members can explain why they have had their names expunged from the Corruption and Crime Commission's records

to the Procedure and Privileges Committee to —

- (1) advise the House whether or not such comments amount to a breach of parliamentary privilege or otherwise unparliamentary conduct; and*
- (2) report to the Assembly at the earliest possible opportunity, but no later than 21 October 2010.*⁷

The suspension motion was carried and, after debate, the Legislative Assembly further agreed to the substantive motion which accordingly became a referral to your Committee.

Scope of the Inquiry

In addressing the terms of reference your Committee notes that it has a narrowly defined remit—that it is required to determine two issues only: do the comments made by the Member for Cannington on 16 September 2010 amount to:

- (1) 'a breach of parliamentary privilege' or
- (2) 'otherwise unparliamentary conduct'?

In determining these issues, your Committee notes that there is a clear distinction to be drawn between a 'breach' and an 'abuse' of privilege—a subject which was dealt with by the Western Australian Parliamentary Standards Committee in its 1989 report:

A breach of privilege essentially occurs when a person or body violates, disregards, obstructs, removes or attempts to remove one of the constituent rights or immunities either

⁶ Mr W.J. Johnston, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 September 2010, p. 7273.

⁷ Mr R.F. Johnson, MLA, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 23 September 2010, p. 7274.

of members individually or either House collectively and which are known by the general name of privileges and which either through common law or statute go to make up what is recognised in law as parliamentary privilege.⁸

...

An abuse of privilege could occur when a member, or a House of Parliament, uses parliamentary privilege to act in a manner which exceeds the purpose for which the privilege is claimed or takes unfair advantage of the privilege whilst in the process depriving individuals of their legitimate rights or prejudicing the national interest.⁹

It is plain that the act of *exercising* the privilege of freedom of speech cannot constitute a *breach* of that privilege—to do so would effectively nullify the privilege. Notwithstanding this, the House has the capacity to decide that the words uttered by the Member for Cannington could constitute an *abuse* of the privilege. As the exercise of freedom of speech in the House ‘ought not to be impeached or questioned in any court or place out of Parliament’,¹⁰ it is the responsibility of the House itself to ensure that this special privilege is not grossly abused.

Consequently your Committee has considered whether the remarks of the Member for Cannington could amount to an *abuse* of privilege and in doing so considered the following tests:

- Were the comments made by the Member for Cannington so highly damaging or of such a serious nature that in the absence of a legitimate reason for making them they could be regarded as an abuse of privilege?
- Was there a basis in evidence for the comments or did the Member reasonably believe there to be a basis for them?
- Was there a reckless disregard for the truth or otherwise of the statements made?

The second aspect of the House’s referral sought this Committee’s view on whether the comments amounted to ‘otherwise unparliamentary conduct’. The term ‘otherwise unparliamentary conduct’ in this case seems only capable of referring to whether or not the Member for Cannington had complied with Standing Order 92 which reads:

Imputations of improper motives and personal reflections on the Sovereign, the Governor, a judicial officer or members of the Assembly or the Council are disorderly other than by substantive motion.

In establishing whether the Member has infringed this Standing Order the Committee has considered the following:

⁸ Western Australia, Parliament, Parliamentary Standards Committee, *Report of the Parliamentary Standards Committee*, Volume 1, Report, findings and recommendations, [Perth], [Government Printer], 1989, p. 31.

⁹ *Ibid.*, p. 32.

¹⁰ Extract from the terms of Article 9 of the *Bill of Rights 1689* applicable in Western Australia.

- Did anything the Member for Cannington said in the comments referred to your Committee impute improper motives or amount to a personal reflection of such a serious nature that they should not have been said except on substantive motion?
- Were the comments such that the Member should have been directed to withdraw them when made?

Conduct of the Inquiry

The Committee reviewed publicly available practice directions and other material from the Corruption and Crime Commission (CCC) in relation to the use of suppression orders and noted that suppression orders had been made on a number of occasions over the years.

The Committee also looked at published authority on the use of words such as ‘their’ as a gender-free singular pronoun.

As transcripts of parliamentary debates are subject to a degree of editing by Hansard, a video and audio recording of the relevant part of the debate was obtained and a verbatim transcript of this extract was produced for the Committee. This verbatim transcript appears as Appendix One to this report.

Two witnesses were called to provide evidence. The first witness was the Parliament’s Reporting Services Manager, Ms Belinda Corey, who was requested to attend a closed hearing to give evidence to the Committee regarding *Hansard* transcripts, editing and correction policies generally and the production of and corrections to the relevant transcript of 16 September 2010. The second witness was the Member for Cannington, Mr Bill Johnston, MLA, who was called to provide evidence about his comments in the House and related matters. In the interests of procedural fairness the Committee invited the Member for Cannington to attend when Ms Corey was giving her evidence.

Summary of Evidence

Ms Corey at a hearing on 11 October 2010 advised that a transcript of a member’s speech is produced in ‘accordance with Hansard’s editing guidelines’.¹¹ Those guidelines, as recorded in the *Members’ Handbook*, are as follows:

The record of parliamentary debates in Hansard is not strictly verbatim. Members’ speeches are edited in accordance with the Parliament’s editing policy, which provides that editing should —

- *translate the spoken word to the written word;*
- *correct syntax and grammar in accordance with contemporary use of the language;*

¹¹ Ms Belinda Corey, Reporting Services Manager, Parliament of Western Australia, *Transcript of Evidence*, 11 October 2010, p. 1.

- *correct inadvertent errors; and*
- *eliminate needless repetition.*

*The editing policy provides further that nothing will be omitted from the transcript that adds to the meaning of the speech or assists to illustrate the argument advanced, and that words will not be altered unless incorrectly used.*¹²

Miss Corey further advised that a duplicate of this edited transcript is provided to members for checking; that, if required, an audio recording of the debate is consulted; and that if a member returns the duplicate with corrections:

*we look at the nature of the changes that were made and make a decision about whether it is an acceptable change in accordance with our corrections policy which, by and large, is that words that were not said may not be added and words that were said may not be deleted. In deciding whether such corrections are allowed, we also have regard for the mood of the debate and the potential sensitivity of certain types of statements.*¹³

Mr Johnston requested corrections to the relevant *Hansard* duplicate of 16 September 2010. A copy of the page showing the requested corrections appears as Appendix Two to this report. Ms Corey advised that Hansard accepted the member's requested correction to show that he said: 'The Member for Wanneroo can explain himself, and other members can explain'.¹⁴ Hansard did not accept the Member for Cannington's other suggested correction to this sentence that he said 'another member' instead of 'other members',¹⁵ nor did Hansard accept his proposed changes to plural and singular usage.¹⁶

Mr Johnston provided evidence to your Committee at a public hearing on 11 October 2010. He stated:

*On 16 September 2010, during a debate relating to accountability, my intention was, (a), to draw the attention of the Member for Wanneroo, who was interjecting on my contribution, to his own need to account to his electors; and (b), more broadly to draw the chamber's attention to my understanding that a member of the Liberal Party had had their name deleted from the Corruption and Crime Commission's published records.*¹⁷

Upon subsequent questioning, Mr Johnston reiterated his view that —

At no time, in plain reading of the words that I used either in any of the extract from proceedings in the Legislative Assembly, Thursday 16 September, or that we have been

¹² *Members' Handbook*, dated August 2010, on POWAnet parliamentary intranet, p. 41.

¹³ Ms Belinda Corey, Reporting Services Manager, Parliament of Western Australia, *Transcript of Evidence*, 11 October 2010, p. 1.

¹⁴ *Ibid.*, p. 5.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 7.

¹⁷ Mr W.J. Johnston, MLA, *Transcript of Evidence*, 11 October 2010, p. 4.

*given this morning or in the Hansard, do I make, in my view, any connection between the Member for Wanneroo and the CCC.*¹⁸

And, further, that:

*it cannot ever be the case that the Member for Wanneroo was included in that second phrase following the conjunction of “and”.*¹⁹

Upon being questioned as to his statement that ‘other members can explain themselves about why they’ve had their name expunged from the CCC’s records’,²⁰ Mr Johnston insisted that he said—and *intended* to say:

*“The Member for Wanneroo can explain himself and another member can explain themselves about why they’ve had their name expunged.” This is really the critical issue. I did not say “and other”; I said “and another”.*²¹

While the member’s contention that he said ‘and another’ and not ‘other’ member in the debate was not supported by Hansard nor by the verbatim transcript prepared for the hearing, your Committee accepts that it was open for the member to believe that he did in fact use these words—particularly, as the verbatim transcript confirms the member’s proposed correction that he referred to ‘name’ and not ‘names’ in the above sentence—a use which indicates a single member was being referred to.

On the basis that it was possible that the Member for Cannington believed that he had only referred to a single member having ‘their name expunged’, your Committee asked if he could provide evidence to support this claim. He replied that he had in his possession:

*two copies of the CCCs transcript from 7 December 2004. In the first version—I call it the first version—that was published by the CCC, the Member for Carine’s name is mentioned, and then subsequently, I accessed the CCC’s website and found that the CCC’s transcript from that day had been amended to remove the Member for Carine’s name.*²²

At the conclusion of the hearing the Member for Cannington provided a copy of the original transcript to your Committee. This transcript establishes that the name of the Member for Carine did appear in the earlier transcript as claimed by the Member for Cannington.

Having satisfied itself that the Member for Cannington had some evidence to support his reference to a member having ‘their name expunged’ from CCC records, your Committee had to determine whether his comments amounted to ‘otherwise unparliamentary conduct’. A member infringes Standing Order 92 if he or she makes ‘imputations of improper motives’ or ‘personal reflections’ in relation to another Member of Parliament. The following exchange supports your Committee’s view that the member did not infringe this Standing Order and was intending to state the facts:

¹⁸ Ibid., p. 7.

¹⁹ Ibid., p. 8.

²⁰ Ibid., p. 2 (question uses wording from the verbatim transcript obtained by the Committee).

²¹ Ibid.

²² Ibid., p. 4.

Mr M. McGOWAN: ...that is a fairly large allegation, to suggest that someone has had their name expunged from CCC records... I would like to know: one, what your evidence is for someone having done that, whether you have a reason behind someone having had their name expunged from CCC records.

Mr W.J. JOHNSTON: I have a copy of the Corruption and Crime Commission's transcript, 7 December 2004, in which the Member for Carine's name is mentioned. Nowhere in the transcript does the commissioner make a suppression order in relation to that evidence. It was my reasonable belief that at some time subsequent to the publication of the transcript on the commission's website, the Member for Carine took steps to have his name removed from the published transcript of the Crime and Corruption Commission.

Mr M. McGOWAN: Do you have any idea why?

Mr W.J. JOHNSTON: No, I do not.

Mr M. McGOWAN: Or how?

Mr W.J. JOHNSTON: No, I do not.

Mr M. McGOWAN: So you have not made any allegations about those things —

Mr W.J. JOHNSTON: No.

Mr M. McGOWAN: — you are just stating facts —

Mr W.J. JOHNSTON: Yes.²³

Your Committee further notes that no point of order was raised at any time in this debate with reference to the Member for Cannington's remarks, nor was he directed to withdraw them by the Deputy Speaker.

It cannot be established that there were imputations of improper motives or personal reflections such as would be caught by Standing Order 92.

²³ Ibid., p. 8.

Finding 1

Amongst a range of possibilities, it is open to conclude that where *Hansard* records the Member for Cannington as saying:

The Member for Wanneroo can explain himself, and other members can explain why they have had their names expunged from the CCC's records

he may have been referring in the first part to certain activities of the Member for Wanneroo and then disjunctively to another member who had his name suppressed in the records of the Corruption and Crime Commission.

Finding 2

The Member for Cannington had evidence for the comments he made in the House that a member had at an earlier time had his name suppressed in Corruption and Crime Commission records.

Finding 3

The Member for Cannington's comments did not amount to 'otherwise unparliamentary conduct'.

Recommendation

Your Committee recommends —

That the House take no further action in relation to the matter.



APPENDIX ONE

VERBATIM TRANSCRIPT — EXTRACT FROM PROCEEDINGS IN THE LEGISLATIVE ASSEMBLY ON 16 SEPTEMBER 2010

Extract from Proceedings in the Legislative Assembly — Thursday, 16 September 2010

Verbatim Transcript — Prepared for the Procedure and Privileges Committee

Mr W.J. JOHNSTON: Thank you very much. Because we've seen, this is, this is the type of provision that hides accountability. That removes the opportunity for the people of this state to understand. So when the Minister has a deal with his mates and, and exempts his mates from, ah, from being, ah, charged, ah, money for the services of the, police services. But my, my constituents attending the AFL have to pay. It's outrageous, it's outrageous what this is...

Mr P.T. Miles: [Inaudible interjection.]

Mr W.J. JOHNSTON: Oh, we talk about accountability. Don't you go there Member for Wanneroo. You want to talk about accountability? You can stand up and explain, [The Deputy Speaker: Member for—Members!], Member for Wanneroo, [The Deputy Speaker: Members!], why it is that you haven't been accountable [The Deputy Speaker: Members!] to the people of your electorate. But we don't worry about that. Because as this, this, as you very well know, ah, Mr Acting, ah, Deputy Speaker, this is about accountability. We're having a discussion here about [The Deputy Speaker: Member for Wanneroo!] accountability. And I...it's, you know, we've seen the level of accountability from members opposite. You know, there's members opposite who've had their name expunged from the record of the CCC. Isn't that an interesting issue? Their name expunged from the [The Deputy Speaker: Member for Cannington!] record of the CCC. That's the type of, ah...

The DEPUTY SPEAKER: Member, Member for Cannington, come back to the point.

Mr W.J. JOHNSTON: I am exactly at that point. As you quite rightly should, you should very much draw me to the, to the provision that we're dealing with. We're discussing accountability. It's an issue that the Liberal Party have such trouble dealing with. And we've seen that. The Member for Wanneroo can explain himself and other members can explain themselves about why they've had their name expunged from the CCC's records. Ah, these are all things that go to the question of accountability. What is the minister afraid of? Why doesn't he want to have a provision here? He, he may have a reason; he may have a proper reason. But he hasn't explained what that proper reason is. If he has, if he's got a reason why he's hiding, hiding accountability. You know, is there a question of...[unclear]... to the minister... Is that what's the problem here?

APPENDIX TWO

HANSARD DUPLICATE MARKED WITH REQUESTED CORRECTIONS

Thursday, 16 September 2010 B 12:40 assembly 023 Page 4

Mr W.J. JOHNSTON: Thank you very much. This is the type of provision that hides accountability and removes the opportunity for the people of this state to understand decisions. When the minister does a deal with his mates and exempts his mates from being charged for WA Police services that my constituents who attend the AFL have to pay, it is outrageous.

Mr P.T. Miles interjected.

Mr W.J. JOHNSTON: If we are talking about accountability, the member for Wanneroo should not go there. He can stand up and explain why he has not been accountable to the people of his electorate. But we will not worry about that.

The DEPUTY SPEAKER: Members!

Mr W.J. JOHNSTON: As he very well knows, we are having a discussion about accountability.

Mr P.T. Miles interjected.

The DEPUTY SPEAKER: Member for Wanneroo!

Mr W.J. JOHNSTON: We have seen the level of accountability from members opposite. Members opposite have had their name expunged from the Corruption and Crime Commission's record. Is that not an interesting issue?

The DEPUTY SPEAKER: Member for Cannington, come back to the point.

Mr W.J. JOHNSTON: I am exactly at that point. You should certainly draw me to the provision we are dealing with, Mr Deputy Speaker. We are discussing accountability. It is an issue that the Liberal Party has great trouble dealing with. We have seen that. The member for Wanneroo ^{can explain his behaviour} and other members can explain why they have had their name ^{expunged} expunged from the CCC's records. These are all things that go to the issue of accountability. What is the minister afraid of; why does he not want an accountability provision here? He may have a proper reason, but he has not explained what it is. If he has a reason why he is hiding from accountability? Is there a question of disdis[12:45:57 PM] the minister's decision? Is that the problem here?

Mr R.F. Johnson: You are really a nasty bit of work, aren't you.

Mr W.J. JOHNSTON: No, minister; I am not the nasty one here.

Mr R.F. Johnson: You almost single-handedly brought the former Labor government down.

Mr W.J. JOHNSTON: I have made no allegation against anyone.

Mr R.F. Johnson: Yes you have.

Mr W.J. JOHNSTON: Who?

Mr R.F. Johnson: Me.

Mr W.J. JOHNSTON: No, I have not.

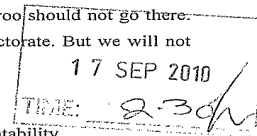
Mr R.F. Johnson: Yes, you have.

Mr W.J. JOHNSTON: Who?

Mr R.F. Johnson: Me. You are a disgrace.

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Suggested corrections must be returned by 4.00 pm on the day after your speech to meet publishing deadlines.
The Hansard fax number is (08) 9222 7813.



Note:
should read
The member for Wanneroo can explain his behaviour and another member can explain why he has had his name expunged from the CCC's records.

APPENDIX THREE

HEARINGS

List of hearings for the inquiry.

Date	Name	Position	Organisation
11 October 2010	Ms Belinda Jayne Corey	Reporting Services Manager, Parliamentary Services Department	Parliament of Western Australia
11 October 2010	Mr William Joseph Johnston	Member for Cannington	Legislative Assembly