

FORMER MEMBER FOR DARLING RANGE — CRIMINAL INVESTIGATION

Amendment to Notice of Motion

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [11.49 am]: I seek leave to move my motion in an amended form.

Leave granted.

Motion

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [11.49 am]: I move —

That this house, in response to the request of the Commissioner of Police to the Speaker dated 9 May 2018, directs the Procedure and Privileges Committee to confer with the Commissioner of Police and provide to the commissioner the evidence and documentation the committee considers —

- (a) is relevant to the commissioner’s investigations;
- (b) does not breach parliamentary privilege; and
- (c) is consistent with the house’s obligation to protect witnesses,

provided to the committee in relation to the inquiry referred to the committee concerning statements made to the Legislative Assembly by the former member for Darling Range.

The Legislative Assembly Procedure and Privileges Committee report, “Misleading the House: Statements Made by the Member for Darling Range” was tabled, as members are aware, in the Legislative Assembly on 8 May 2018. The report contained 15 findings and made eight recommendations, which are on the record. Subsequent to the tabling of the report the then member for Darling Range resigned from the Legislative Assembly effective on 8 May 2018 prior to the house taking action on the recommendations of the report. The findings in the report include possible criminal acts that go beyond the scope of misleading Parliament.

On 9 May and 23 May 2018 the Commissioner of Police wrote to the Speaker noting that the report contained findings that went beyond the scope of Parliament. The commissioner requested access to any documents and evidence in relation to the committee’s determinations for the purpose of a criminal investigation and, in particular, the commissioner drew attention to findings related to the forgery of a degree from the University of Leeds. It is open to the house to support the commissioner’s request and we should be supporting it.

On 15 May 2018 the Clerk of the Legislative Assembly provided advice for the Speaker, which was tabled. The Clerk recommended caution about the releasing of evidence of any other witnesses et cetera due to concerns about the protection of those witnesses. The commissioner’s response of 23 May 2018 advised the Speaker that it would not be appropriate to advise about any potential criminal offence being investigated. The commissioner also advised, based on evidence that he had received from the State Counsel dated 17 May 2018 that it was open to the Legislative Assembly to disclose the documentation of evidence without breaching or waiving parliamentary privilege of other witnesses. On 24 May, Mr Speaker advised members of the Legislative Assembly regarding some of these issues of concern.

Last night I moved a motion and earlier today I met with the manager of opposition business about this matter. Ultimately, this matter requires Parliament to respond. I appreciate the discussion I had with the manager of opposition business who agreed that, ultimately, this is a matter for Parliament to determine and certain issues and principles need to be considered as part of that determination, discussion and, indeed, recommendation. I put on record my appreciation for the assurance from the opposition that that is the principle on which the amended motion that I have now moved in this place was moved. Ultimately, this is a determination for Parliament; that is the reality. It is the responsibility of the Parliament to consider all matters that have been presented and then make a determination on how we as legislators will respond. There is no doubt that this process and, indeed, how we got to this process is unique and without precedent. That highlights the importance of due and careful consideration of the implications of the actions that Parliament may take.

The amended motion seeks to deliver a course of action for the Parliament that we believe will do a number of things. Those are highlighted under paragraphs (a) to (c). I believe that is an appropriate process and recommendation to be supported by the house. In times such as this it is important that we put aside politics and look at this from the sense of a Parliament decision. Essentially, any decision that we make now and into the future will affect future members of this place. It is something that we should always consider in any determinations of this nature because all of us will one day not be here. Indeed, one day all of us will have valedictory speeches made on our behalf. It is important that the role of legislator is considered very carefully in matters such as this.

Extract from Hansard

[ASSEMBLY — Thursday, 14 June 2018]

p3482b-3489a

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

I again put on the record my appreciation for the support of the opposition, particularly of the Leader of the Opposition and the manager of opposition business. I commend this motion to the house.

DR M.D. NAHAN (Riverton — Leader of the Opposition) [11.56 am]: I want to thank the Leader of the House for moving this amended motion. As indicated, the Liberal Party will be supporting it. The Procedure and Privileges Committee report that was referred to was wideranging; its recommendations were profound and unprecedented. It recommended that a member of this house be suspended or dismissed from the house. I am not a parliamentary expert but it was clearly unprecedented in Western Australia but also almost unprecedented in the history of parliamentary systems. We are dealing with an unprecedented situation. Today we are dealing with the information gathered in the Procedure and Privileges Committee's investigation and which other bodies can access. We were confronted with the Commissioner of Police wanting access to that information. That itself gives rise to challenges of an unprecedented nature. With great positive effect, history has given special privileges to parliaments, which are wideranging. Quite rightly, parliaments have been very careful to ensure that those privileges be sustained and protected, but also restricted in scope. The issue at heart was whether the privileges given to people who gave evidence to the Procedure and Privileges Committee should be sustained and maintained. At the same time, we want to ensure that, when appropriate, the Commissioner of Police has access to information needed to do his task. In the 1990s this Parliament gave over its privilege through the Criminal Code on certain conditions, in particular section 57; that is, it allowed the judiciary to adjudicate on misleading Parliament. There is a precedent for handing over privilege. On 17 May I put forward a motion that we had come to carefully that tried to address this issue. We did so only after receiving extensive advice from legal sources and the Clerk of the Legislative Assembly. We knew that we had to do so in a manner that would protect the key issues at stake, which is that when people in committees are given privilege—whoever they may be—if we fail to adhere to and sustain that privilege, it will undermine the whole parliamentary system, particularly the committee system. Most of us have been involved in committees and we know how absolutely vital it is that when we give privilege to people giving evidence before a committee that we adhere to that. That was the case in the examination of the former member for Darling Range in the Procedure and Privileges Committee. It was not just him; I presume that a range of other people gave evidence to the inquiry. The initial motion by the government would have allowed the Commissioner of Police to have access to all the information presented by all parties who appeared before the Procedure and Privileges Committee. That was vastly too wide. It would have undermined Parliament and the committee system. For me, not being a constitutional lawyer or expert, this goes into some rather arcane issues, but there are also issues of whether it was legal or appropriate for that to happen. How do we deal with the need for the Commissioner of Police to have access to the information gathered appropriately by the privileges committee to pursue under section 57 of the Criminal Code, as Parliament will give him the right to do? That matter dealt with misleading Parliament. The motion before the house does this effectively and a number of aspects to the motion facilitate that.

As to the evidence and correspondence presented to this house by the Speaker between the Commissioner of Police and the State Solicitor's Office and others, the Commissioner of Police has indicated that he will not publicly reveal to Parliament or the committee what sections of the Criminal Code he is pursuing in accessing information from the Procedure and Privileges Committee. He will not publicly do so; that is his choice. I can understand some of those issues. In pursuing criminal activity, he needs to keep his cards to himself to act effectively. I understand that. This motion allows him, not to do so publicly, but to have a discussion in confidence with the privileges committee about the information he needs, and whether he is pursuing section 57. This gets around the problem he had, and that we have, with this issue.

Breaching parliamentary privilege—as I said, it is arcane in nature—would be going too far in this case. We need to be able to allow the police to do their duty but also to sustain parliamentary privilege. We in this house, and the people we represent, whether our constituents, the people of the state more widely, or of the nation, to be honest, need the special privilege of Parliament to be held sacrosanct. The Clerk has been magnificent in this process. We, as politicians, take part in the heated battle of political debate inside and outside this chamber, and it is a freewheeling action that can get very aggressive. In that process, we can push the boundaries of many things, and we need the guidance to make sure that when we come up against the norms, standards and privileges of Parliament, we do not go too far. I want to thank the Clerk for providing guidance to us, on both sides, on this issue. It is absolutely vital. One of the questions is whether, and under what conditions, in providing information under section 57 to the police, we violate parliamentary privilege. The committee has given us a briefing paper stating that, in its collective view, providing information to the police under section 57, if they so wish it, does not violate parliamentary privilege, because if the information is provided inaccurately to the committee, no privilege is provided, and we cannot waive something that was not given in the first place. Those questions are for learned sources to review.

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

It was important for us to protect the evidence given before committees, and Parliament more widely. If we allowed, even under this extreme, unprecedented situation, a precedent to be set for the provision of all the information available, our committee system would collapse. As a committee chair, I was once directed by this Parliament to undertake an inquiry into gas pricing. The committee received all sorts of evidence of an extremely confidential nature. If we had any indication that that information could have been gleaned by a third party, even the police, for pursuit in the courts, that information would not have been provided. I am sure most members would have a similar example.

I think we have come to a sensible compromise in discussions, under which the government's proposal as submitted last night has been amended to take into consideration the commissioner holding a confidential discussion with our agents in this place on this issue, which is the Procedure and Privileges Committee. We have included the requirement that it does not breach parliamentary privilege, and, importantly, that it be consistent with the house's obligations to protect witnesses. Importantly, we have also allowed the police, under section 57, if they so wish, to pursue the evidence provided by the former member for Darling Range. It is a good compromise, and something that we have to do. It would be better if we were not here, as they say, but we are, and we just have to deal with this. We in the Liberal Party fully support the amended motion.

MR R.S. LOVE (Moore) [12.07 pm]: I rise to speak to this amended motion. With the addition of the extra wording to the original motion on the notice paper, I and my party seek to support this motion. Importantly, the motion asks the committee to confer with the Commissioner of Police and to then provide the commissioner with the evidence and documentation that the committee considers is relevant and does not breach parliamentary privilege and is consistent with the house's obligation to protect witnesses. Applying those additional measures, instead of just shovelling a wheelbarrow load of information to the Commissioner of Police, with goodness knows what consequences that might have for some of the witnesses involved, is a much better position and one that we can fully support. It does not threaten the fundamental principle of our parliamentary system—that is, the principle of parliamentary privilege. For that reason, the Nationals WA support this amended motion.

We want to assist the police in any investigation. It is important that that be done, but not in any way that would threaten parliamentary privilege, a system that has been built up over 400 years. I think it goes back to the Bill of Rights in 1689, which states —

That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

This is something that has underlain the parliamentary process for a very long time—since 200 years before Western Australia was granted responsible government.

The effects on the witnesses before the inquiry could potentially have been devastating. They gave evidence in good faith, believing that that evidence would be protected, and it is important that they continue to enjoy that protection. At the same time, there may be witnesses who are happy to allow some of their evidence to be known to the police, and if a way can be found for that to occur, in the opinion of the committee and, I assume, with the good advice of the Clerk and others working with the committee and the Commissioner of Police, that can happen in a way that does not hinder the ability of future committees to conduct their business. As the Leader of the Opposition has outlined, when people appear before parliamentary committees, their expectation is that if they want their evidence to be kept confidential, that will be done. If people believe that on the basis of a simple motion and discussion on the floor of the house, their evidence may suddenly become public, they will be very reluctant to cooperate with committees. That would destroy the operation of the committees of this place. The Leader of the Opposition outlined his role on the committee that inquired into gas pricing. I have been involved in committees in which confidential information has been provided. The Minister for Emergency Services sat with me on the Standing Committee on Economics and Industry when we conducted our inquiry into rail. People were reluctant to come forward and speak freely during that inquiry but were willing to do so if they were given the protection of parliamentary privilege.

When people outside the Parliament hear the term “parliamentary privilege” they think, “These politicians are just looking out for themselves. This is one of the privileges that they have.” People probably do not understand that wrapped up in that term is the protection of freedom of speech not just for members of Parliament but for people who give evidence to the Parliament and are involved in discussions with the Parliament. Standing order 308 of the Legislative Assembly states —

Any witnesses examined by the Assembly or a committee are entitled to the protection of the Assembly in respect of their having given evidence and anything that may be said in their evidence.

Were this motion to be passed as it stood originally, that would be contrary to standing order 308, and there would then be an interesting discussion about whether there would need to be a ruling on that. We have not had to cross that bridge, because we have now come to a compromise that will enable parliamentary privilege to remain intact

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

and ensure that evidence presented remains confidential. I assume that when the Commissioner of Police appears before the committee, those discussions will be confidential until such time as it is agreed that that information may be disclosed. That is a very good compromise.

I would like to add my thanks to the clerks for their guidance to the house. I would also like to add my thanks to all members of this house. All members of this house have acted impartially in this matter. They have at heart the best interests of this Parliament and the best traditions of our parliamentary system. Our parliamentary system exists not just in Western Australia but is part of a British heritage that has spread across the world, including some of the former colonies of the British Empire, such as the United States. Our parliamentary system is based on the Westminster system. A fundamental part of the Westminster system is, of course, parliamentary privilege. If that were set aside in Western Australia, our role as members of Parliament would be diminished greatly. Whenever we spoke in this Parliament, we would be wondering whether at some point our words and our actions could be turned against us. That would have a significant impact on our ability to perform our role in representing our community fearlessly and without worrying about incurring sanctions for what we might say, provided, of course, that is done within the standing orders of this place.

I would like to thank all members. I would like to thank the government for addressing the concerns that have been brought to its attention. The government has proposed these amendments, and I thank it for the cooperative process in which it has been involved, in which the clerks and members of Parliament have been able to arrive at a position that will protect the traditions of our parliamentary system and hopefully lead also to the appropriate use of evidence that has been gathered in this particular circumstance to assist the police in their inquiries and subsequent procedures. Thank you very much.

MR P.A. KATSAMBANIS (Hillarys) [12.15 pm]: Colleagues and parliamentarians, the matter that we are dealing with today is extraordinarily serious. It goes beyond its impact on us as members of Parliament. It goes to the integrity of this Parliament. It goes to the faith and confidence that the public of Western Australia can have in the institution of Parliament and in this current Parliament. Obviously, we know that the matters that give rise to the dilemma that we are facing today are unprecedented. There is no need to repeat all those matters. That has led us to a circumstance in which we are effectively sailing in uncharted waters. The risk is that if we are not careful, we will fail to respect longstanding laws and conventions that date back—as members have said—to before the foundation of form of parliamentary democracy in Western Australia and even the settlement of Western Australia. Therefore, we need to tread extraordinarily carefully.

The concept of parliamentary privilege arises from the Bill of Rights 1689 in the United Kingdom, in particular Article 9, which enshrines that principle for parliamentarians. In respect of the operation of Parliament, the principle of parliamentary privilege has been extended well beyond what members of Parliament say in the chamber. That is for good reason. Parliament has changed from a body that used to be opposed to the King to a body that is part of a constitutional monarchy and democratic system in which Parliament is sovereign. There is sovereignty within this Parliament. The principle of parliamentary privilege is extended to every witness who appears before the Parliament or a committee of the Parliament. In Western Australia, we have enshrined that principle in standing order 308 of the Legislative Assembly. Members who have spoken previously have referred to that standing order.

All members of Parliament have all been, or are, members of committees. Yesterday, when chairing the Standing Committee on Community Development and Justice, I said at the start of the hearing, to members of the public, and to people who were going to give evidence to the committee in good faith, that the evidence that they will be providing to the committee is protected by parliamentary privilege; however, that protection does not extend to anything they may say or do outside of the time during which they appear before the committee. The public of Western Australia wants to be able to take us at our word when we say that. The public ought to be able to take us at our word when we say that, because behind that is more than 300 years of law, history and tradition in the Westminster system, and more than a century of law, history and tradition in this place, whereby the Parliament has always protected witnesses who present before parliamentary committees. The real risk is that if we get this wrong, we will send a clear message to the public and to everyone who has appeared, is considering appearing, or may appear in the future before a parliamentary committee to provide us with evidence to assist us with the work that we do on behalf of the public of Western Australia. The message to those people will be that they are mere words when the Parliament says to them, “Come and talk to Parliament and understand that what you tell the Parliament will be protected by parliamentary privilege.” We should not cross that line and send that message to the public of Western Australia, because it will come back to haunt this Parliament and inevitably harm the public of Western Australia. The work of the institution will be compromised through any loss of confidence in it and we are here to work for the benefit of the public of Western Australia. I am not going to repeat myself. I, and others in this place, have said before that most committee members I have ever worked with have left the partisan politics at the door and tried as hard as they can—my committee does, in the very sensitive inquiry we are

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[ASSEMBLY — Thursday, 14 June 2018]

p3482b-3489a

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

conducting on the preparedness for terrorism acts in crowded places—to work together for good outcomes. We should never compromise that. The other thing we should not compromise is the faith and trust placed in us to preserve the law, history, customs and practice of parliamentary democracy that has derived from well before we came into any of these institutions.

In the original motion that was circulated late last night was a real risk that we would be crossing that line and essentially trashing the protections of parliamentary privilege. We would have been trashing the protections conferred to members of Parliament who often come here with information provided to them in good faith and who utilise it in good faith. We would have been trashing the longstanding protections afforded to members of Parliament who in good faith choose to assist the work of the Parliament through the committee process. The developments over the last 12 to 15 hours should be highlighted to show how parliamentarians—I stress parliamentarians, as opposed to partisan political actors—can come together to deal with an extraordinarily serious and unprecedented issue and come to a resolution that is both sound and fair and will allow the Commissioner of Police to access certain information, but at the same time preserve the importance of parliamentary privilege, the public interest and, at the very least, maintain, and hopefully elevate, the standing of the institution of Parliament in the eyes of the public of Western Australia. As the manager of government business, the Leader of the Opposition and the member for Moore on behalf of the Nationals WA have said, the amended motion is, I hope, a motion that can be supported by all members of Parliament. I must put on record that had the motion not been amended and stood in its previous form, I would have found it extremely difficult to support it. Members on all sides of the house would have found it extremely difficult as well. Thankfully, certainly in my case, and I hope in the case of other members from all sides of the house, the amendments that we have arrived at can be supported by all and do not present a dilemma for any member of Parliament in supporting this motion.

We have not arrived here alone. There have been very frank exchanges of views between the Commissioner of Police, his legal advisers and the Parliament, correctly through the office of the Speaker and the Speaker himself. I commend you, Mr Speaker, for bringing the Parliament and the public—as anything you present in here is a public document—into your confidence, revealing the communications so that we could all form a view on this matter. The work of the Clerk of the Legislative Assembly and her team has been extraordinary. They have provided accurate advice on very difficult matters of law. Just as importantly, the advice has been accurate and timely. Accurate advice is best utilised when the information is both timely and accurate. They have committed hours and hours throughout the entirety of the process, through the Procedure and Privileges Committee’s investigations and this period of correspondence with the Commissioner of Police.

The issue that has been ventilated additionally through this whole process and that we ought turn our minds to, but as members of Parliament we do not, is the powers and privileges of Parliament and the way they interact with the Criminal Code of Western Australia. I will not speak at length about it, but it is quite clear in chapter VIII of the Criminal Code that the Parliament has effectively “subcontracted” to the police the investigatory and prosecutorial powers that Parliament initially had for offences against the executive and the legislature. We speak a lot about section 57 in the context of this matter. That is the decision of the Parliament. As the Clerk has told us in her advice, it is something that can therefore facilitate the transfer of evidence between Parliament and its committees, and any investigatory body, including the police, without crossing the line into breaching or in some way compromising parliamentary privilege. But there is a whole host of other possible criminal offences in our Criminal Code and in other acts that do not have this interrelationship between the Parliament, conferring those investigatory and prosecutorial powers over its own affairs—our own affairs—to an external body. They are the matters that we have to be extremely careful about. Section 57 is about misleading a parliamentary committee. If a person misleads the Parliament by giving false evidence, they cannot be protected. We know that; the privilege just does not apply. However, for the rest of the Criminal Code this matter will not be settled today and may come up again in the future. We have to be extraordinarily wary because, as all of us have said today, we want to ensure that the public is confident that when they appear before us and we say to them, “The evidence you give us is protected by parliamentary privilege and won’t be used against you in a court of law or in any other matter, but may become public”, we need to be able to look them in the eye and give them that assurance without any question mark at all from them about whether we would observe that privilege or throw it away at a moment’s notice.

Procedurally, this motion places some obligations on the Speaker and on the Commissioner of Police, but we are talking about two people who hold the highest of high offices in this state. I have faith and confidence that they will be able to sit down in private and have a discussion so that any revelations by the Commissioner of Police will not be made public and will not compromise any investigation.

Our long line of judicial authority suggests how commentary about particular offences or even subjects of investigation may sometimes lead to a mistrial in the future. We do not want to do all that. The Speaker and the Commissioner of Police could get together and assess, based on these criteria, what information is relevant to the commissioner’s investigation; and, very importantly, does not breach parliamentary privilege; and is consistent with the house’s obligation to protect witnesses, as we have been talking about today. Then the Speaker and the

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

Procedure and Privileges Committee could make that assessment and provide the necessary information. I dare say that if the commissioner thinks he needs more information, he would let us know and we would continue the process. I think we need to continue that process in an extremely sensitive way. I thank the government for the work that it has done in the last 15 hours, in conjunction with the opposition, to get from the starting point we had last night when notice was given of a motion that caused significant concern to members of Parliament across the house, and to the public of Western Australia. We have arrived at this position now very, very quickly, which I think is a sound one that can and ought to be supported.

Another thing that I will place on the record is that it has been suggested to me in the course of these unprecedented events over the last little while that although the procedures of the Procedure and Privileges Committee are clouded and shrouded in more than a century of history and its deliberations are often made in private, perhaps, as an institution, we as members of Parliament need to look at how we can provide a lot more of these procedures and deliberations in public open sessions. Perhaps some or all the evidence gathering by the committee in the recent investigation could have been made open to the public or even broadcast online. As I said, the suggestion has been put to me. I do not have a concluded opinion on it, but I think in the context of openness and transparency, and in the modern age, in the twenty-first century, not the seventeenth century, it is an issue—we do not have determine it today—that we should put on the table and consider for future operations.

Again, I thank everyone involved in getting to the situation that we have today in difficult circumstances. It is a difficult matter to deal with. I think that we have reached the position, assuming that this motion passes, and dealt with the matter with integrity. We have allowed the police to access information that they need, but we have preserved the important concept of parliamentary privilege, not only for us as members of Parliament, because I do not think too many people care about us, but for the public of Western Australia, who need to have faith and confidence in parliamentary proceedings.

MRS L.M. HARVEY (Scarborough — Deputy Leader of the Opposition) [12.34 pm]: I also rise on behalf of the opposition to support this amended motion. I will make some brief comments, I am sure to the relief of —

Ms M.M. Quirk interjected.

Mrs L.M. HARVEY: I beg your pardon, member for Girrawheen.

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

Mr P.A. Katsambanis: What did she say?

Mrs L.M. HARVEY: It does not matter what she said. They are all banal interjections from that member.

The SPEAKER: Can we get on with the debate?

Mrs L.M. HARVEY: As I said, I rise on behalf of the opposition to provide some concluding remarks on this motion before the house. Other members have articulated the views of both opposition parties in this Parliament on the motion, as amended, before the house. I was very pleased to be here late last night after Parliament had risen to be in a conversation with the opposition Whips, the members for Moore and Vasse, and the clerks, to run through some of the issues with the motion that was originally proposed. I think before the house now is a very good motion that will ensure that the parliamentary privilege that we afford witnesses who come before our committees will be preserved. I do not think many members of the community understand what we are speaking about when we refer to parliamentary privilege. Whenever I talk about parliamentary privilege, most people see privilege as a rort or some kind of additional perk of the job of being a member of Parliament. In actual fact, as the member for Moore put so well, parliamentary privilege is a preservation of our freedom of speech. The symbol of freedom of speech for this Westminster system is the privilege of Parliament.

Our parliamentary committees look into and interrogate very sensitive issues. I was on the Economics and Industry Standing Committee when it looked at domestic gas pricing and the various partners in the North West Shelf joint venture came before the committee and requested a closed session of that parliamentary committee to talk about domestic gas pricing. Obviously, those contractual arrangements are very sensitive and we needed to ensure that they were afforded appropriate privilege and confidentiality so that they could give us the information that we needed to form our findings and recommendations to this Parliament as a result of that investigation.

Committees also look at sensitive social issues. At the moment, a parliamentary committee is looking at voluntary euthanasia legislation. Many witnesses from the community came before the Joint Select Committee on End of Life Choices under the protection of parliamentary privilege and revealed a range of different experiences that they had with people in palliative care, people who have died and things that have had occurred at end of life. Many of those witnesses would not have been forthright in giving their evidence unless they knew they had the protection of parliamentary privilege to give full and frank evidence to that committee so it can form its findings and recommendations on new legislation.

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

We also have committees that look at the covert operations of police. Police officers go undercover in very dangerous situations, usually in organised crime and drug and money laundering, prostitution and people smuggling operations. Legislation came before this place to enable covert operations to happen in other states. Indeed, I was the minister who sponsored that legislation. We had to walk a very fine line with that legislation to ensure that undercover officers had their identity protected. Obviously, if a successful covert operation ends with a very dangerous criminal being put behind bars, the undercover officer often needs their identity protected ad infinitum to ensure that there will not be ramifications and vigilante action is not taken against them. That was a very tricky piece of legislation. It was examined very closely by both houses of this Parliament to ensure that parliamentary privilege was preserved, should any of those covert operatives come before a parliamentary committee and give evidence. Those are the reasons that we have parliamentary privilege. We want witnesses to be afforded those protections so that they can give frank and fulsome evidence to our committees.

The original motion that the government put on the paper yesterday was a bit tricky. Individuals who are being investigated by police or are witnesses in criminal investigations are afforded the opportunity of legal counsel. The legal counsel will sit with that person, whether they are a suspect or a witness to a crime, and advise them what pathway they should take as they give evidence during a police investigation.

Witnesses who come before the Procedure and Privileges Committee are afforded parliamentary privilege as a protection and not legal counsel to advise them whether the evidence they give may incriminate them. It is a very sensitive issue and to ensure that when evidence is given to the committee under parliamentary protection, which could subsequently end up in the hands of police as part of a criminal investigation, we do not deny those individuals their right to legal protection as they may otherwise have had legal counsel who could well have advised them to be more circumspect in their comments. To me, that is a really important issue that we needed to discuss and that is why I am very pleased we have come up with an amended motion. Although it protects witnesses who give fulsome evidence with the protection of parliamentary privilege, we do not then abrogate our responsibility to them with that protection by being too wide-ranging in what we are prepared to provide to police to conduct criminal investigations. I do not think that anybody in this house believes that the actions of police are inappropriate in any way, shape or form in trying to do their job diligently and consider all evidence that may be available to them. However, evidence that is made available to police that has been provided under the protection of parliamentary privilege without rights to legal counsel being extended to witnesses may not be usable by police in any event but it could influence an investigation. I think we have arrived at a really good motion. I am very pleased to stand here to support it. I would like to put on the record my thanks to the clerks and all those who were involved in arriving at a bipartisan approach to this very delicate matter. Hopefully, at some point the Commissioner of Police and police will conclude their investigations and this matter can be put to bed.

MR J.R. QUIGLEY (Butler — Attorney General) [12.42 pm]: I rise only to clarify that which I think has been confused and conflated on the question of parliamentary privilege. Parliamentary privilege—our rights to privilege in this Parliament—derives from article 9 of the Bill of Rights, which secures our right in this chamber or in committee to speak freely and debate on any matter without fear of being held to account for what we say in any other place. That includes what is said within a committee so if a member or a witness before a committee says something defamatory or such like, they are protected by parliamentary privilege. What is being conflated here and confuses the argument is the concept of confidentiality. What is said in a committee can be published at any time by the committee and often is online. As to the closed hearings held by the Procedure and Privileges Committee, it decided to publish a report, much of which was taken in confidence. That decision was open to the committee. The idea that what is said in committee or evidence given in committee is constrained by a concept of parliamentary privilege of publishing that which is taken in evidence is not based in law, the Parliamentary Privileges Act, or common law.

It is open for the committee of this chamber to decide what it will publish from time to time. The member for Scarborough mentioned that there could be inquiries into matters of covert police operations. There may well be, but that does not invoke the concept of parliamentary privilege. If evidence is taken in confidence in a hearing, it is up to the committee to respect that confidence or not, but it does not invoke the concept of parliamentary privilege. Parliamentary privilege protects us from being held to account elsewhere in any other forum for what we say here. That always applies, unless abrogated by other legislation, expressly or implicitly. It can be argued that section 57 of the Criminal Code, by necessarily implication, abrogates parliamentary privilege because if a person before a committee wilfully tells an untruth—wilfully tells a lie—they can be prosecuted under the specific provision of section 57 of the Criminal Code. But they could not be if that privilege held. They would be protected from being held to account elsewhere. A specific section of criminal law states that it is an offence to do that.

I wanted to briefly rise to say that this house should not conflate and nor should it confuse the two separate concepts. Confidentiality of evidence given can be waived at any time by a committee; and, if the committee does not want to waive confidentiality, this chamber can direct the committee, on occasions, to waive it. On the other hand, parliamentary privilege is rooted in article 9 of the Bill of Rights. Those two should not be confused or

Extract from *Hansard*

[ASSEMBLY — Thursday, 14 June 2018]

p3482b-3489a

Mr David Templeman; Dr Mike Nahan; Mr Shane Love; Mr Peter Katsambanis; Mrs Liza Harvey; Mr John Quigley

conflated. I leave it to the committee to decide what confidential evidence it discloses to the Commissioner of Police in the course of his investigation. That is the only contribution I choose to make.

MR D.A. TEMPLEMAN (Mandurah — Leader of the House) [12.46 pm] — in reply: I thank members of the opposition, the National Party and the government for their contributions to this debate. It is an important consideration and I commend the motion to the house.

Question put and passed.