Standing Committee on Procedure and Privileges — Fifty-fourth Report — "Standing Order 6(3): Recalling the Council" — Motion

Resumed from 20 February on the following motion moved by Hon Martin Aldridge —

That the report be noted.

Hon MARTIN ALDRIDGE: I rise to make a contribution to the fifty-fourth report of the Standing Committee on Procedure and Privileges, "Standing Order 6(3): Recalling the Council". Members would be aware that this matter goes back some way—to the latter part of 2017, if I am not mistaken—to which reference is made in the report. The inquiry was extensive, not in terms of its scope, nor the length of time it took to consider these matters, but because of the membership of the committee. Some 11 of the 36 members of this house constituted the Standing Committee on Procedure and Privileges' inquiry into standing order 6(3). It was an interesting experience. The committee's membership represented the will of this place when it voted to amend a motion by me during motions on notice to include and extend the membership of the committee to all party leaders who were not already members of the Standing Committee on Procedure and Privileges for the purpose of the inquiry. It will be interesting to see how the house deals with future referrals of standing orders, matters of privilege, or other matters that may be referred to the Standing Committee on Procedure and Privileges arising from this new standard, if not precedent, that has been set by this inquiry.

It was late 2017, as the report mentions, when the Legislative Council was heading into a parliamentary recess. Earlier that year, the Council had defeated a regulation on two occasions for amendments to the gold royalty in Western Australia. There was some concern that the Treasurer of the state would continue his crusade to increase the gold royalty in Western Australia as gold royalty 3.0 was to be gazetted shortly after the Legislative Council was set to rise in 2017. I think that was a genuine concern and it led to the crafting of, at that time, a temporary order, as it was anticipated, which would have provided a protection to the Legislative Council during the recess. Keep in mind that quite a lengthy recess was planned between the end of 2017 and the beginning of the 2018 sitting year. If I am not mistaken, we did not come back until March in the 2018 sitting year, so there was some concern about some premeditation by the government and that it planned to, for the third time, defy the vote of the Legislative Council and re-gazette gold royalty 3.0. Part of the motion, as it was then, whilst providing that protection during the recess, was to also refer the matter to the Standing Committee on Procedure and Privileges to report. If I am not mistaken, the temporary order was to be suspended upon receiving that report from the PPC. Obviously, much water has gone under the bridge since then, because in late 2017 when I moved a motion to suspend standing orders, the Leader of the House gave a commitment to this house that the government would not do what we feared it would do during the recess. That motion was then withdrawn by leave of the house. My substantive motion then sat on the notice paper for much of 2018 until 12 and 19 September, when the house dealt with the motion with amendment. That amendment, as I have previously mentioned, was the addition—whether they liked it or not—of the six party leaders to the Standing Committee on Procedure and Privileges for the purpose of the inquiry.

I want to talk a little bit about the substance of the inquiry that the standing committee held. My view has not changed regarding the need to reform our standing orders on this issue. Time and again, we talk in this place about many things, but some of them are repeating themes. One is the importance of the separation of powers between the executive, the judiciary and the Parliament in our system of democracy. We talk about the protection of our sovereignty and our institution. Often when we talk about those things, it is about protecting our Parliament and our Legislative Council—this place—from, typically, the executive and executive action. Another thing that is often referred to is the importance of the Legislative Council as the house of review, to provide a check and balance on government as the house of accountability. There is often a healthy tension between the two houses of our state Parliament. We often compete with our colleagues in the other place about our respective relevance. I will not delve into that too much out of respect for the camaraderie between the two houses of Parliament, but I would argue that the Legislative Council prides itself on its focus in delivering and performing its legislative functions. Despite these two principles, which I think we all hold dear, we continue to be vulnerable in some respects. Although the motivation for anticipating a change to standing order 6(3) was obviously and clearly motivated by uncertainty going into the recess at the end of 2017, having reflected on that during 2017, which led to the passage of the motion in September 2018 and resulted in this inquiry, I think the circumstances remain that there is some validity in considering how we can better protect this chamber from executive action.

Standing order 6(3) as it stands today vests the entire power, in practice, with the Leader of the House. Members would be aware that standing order 6(3) did not exist before 15 November 2016, so it is a relatively new order. Before then, the standing orders did not have a recall provision as they do today. Indeed, that became a problem when the Legislative Assembly and the Legislative Council was recalled by the government of the day to deal with a casual Senate vacancy. If I am not mistaken, that arose from the resignation of Senator Bullock. Standing order 6(3) states —

> When the Council is adjourned, the President may on the request of the Leader of the House and after consultation with the leaders of all parties vary the day and time at which the Council will next meet.

Obviously, several parties are mentioned in standing order 6(3)—the President, the Leader of the House and the leaders of all parties. The key figure from all those people mentioned in standing order 6(3) is the Leader of the House. The Leader of the House has that discretion, after consulting with the leaders of all parties. That does not mean that the leaders of all parties need to agree to recall the house, but certainly consultation needs to take place, and there is still a discretion, as I read the standing order, for the President to exercise his or her powers with respect to that recall. Ultimately, recall can occur under our standing orders only upon the request of the Leader of the House. It is fair to say—I am not sure that members will disagree with this point of view—that we cannot discharge the powers and functions that we have as a Legislative Council in many respects unless we are sitting. We cannot, for example, disallow subsidiary legislation, unless we are sitting.

The CHAIR: Hon Martin Aldridge on the question that the report be noted.

Hon MARTIN ALDRIDGE: Tomorrow, according to the weekly bulletin, the chamber will consider a disallowance motion on government regulations, which was moved by Hon Robin Scott. Increasingly, the Parliament is giving more and more power to the executive by way of regulation-making powers. It was only yesterday, during the second reading debate on the Waste Avoidance and Resource Recovery Amendment (Container Deposit) Bill 2018, that members were expressing their concern about the skeletal nature of that bill and the power that we will be vesting in the government to make decisions around the operations of the container deposit scheme in Western Australia. Uncertainty was expressed about what the regulations will look like or what they will compel of our citizens. Some regulations will obviously be more time-sensitive than others. There will be those that may be passed by government and they can simply wait until the house returns in its ordinary sitting cycle to be dealt with, but others may need to be dealt with in a more timely manner. I think the primary reason to have a modified recall provision from what currently stands in the standing orders will be to deal with subsidiary legislation—a core function of this house.

Additionally, another important protection is with respect to matters of privilege and contempts of the Council. How can we defend and uphold our rights and privileges without amendment to the recall provision? It empowers one person—the Leader of the Government in the Legislative Council. I think that it is fair to say that recalling the house for certain circumstances, whether it to be deal with a matter of privilege or to deal with considering the disallowance of subsidiary legislation, may not be in the government's interest or in the interests of the government party. As I reflect on some of the debate that occurred during the consideration of this motion that led to the inquiry, people reflected on what the Legislative Council used to have, which was an adjournment debate, which allowed for an adjournment motion that the house rise until a point in time, to be amended by the house as it saw fit. That practice occurs in other jurisdictions and, if I am not mistaken, it occurred in the Australian Senate until it adopted a recall provision very similar in nature to the one that I proposed for the Legislative Council.

I draw members' attention to standing orders 93 and 94, which provide that matters of privilege can be raised with the President in many different forms. However, ultimately, the President has to report to the Council. The President cannot do that if the Council is not sitting. Members might be aware that we have at times in our cycle lengthy periods of recess. We have a lengthy period of recess in the middle of the year, typically in the order of five to six weeks, and we have a longer recess at the end of the year, typically in the order of two to three months. We also have a particularly long recess when we head into an election year, whereby we may have a period from, say, late November or early December through to the formation of the new government and the opening of the houses of Parliament, which typically occurs in the April of the election year. The Legislative Council, despite the fact that its members are elected for a fixed four-year term from, I think, 24 May, has limitations not only on its ability to review subsidiary legislation of the executive, but also with respect to matters of privilege and contempts of the Council. Some may argue that at some future time we may need to review standing order 93 in particular, to set out a more modern process for dealing with matters of privilege with respect to reporting to the Council when it is out of session.

It is interesting that this matter is before us now because the chamber was contemplating last week—I had anticipated that we would further contemplate it this week, but that will not be the case—the Corruption, Crime and Misconduct Amendment Bill 2017, which reinstates the jurisdiction of the Corruption and Crime Commission to investigate certain matters by members of Parliament. One of my great concerns with how we deal with that bill—noting that it is a matter before the house, so I do not want to delve into it—is how we protect the privileges of the house from executive action. That executive action could be from the Corruption and Crime Commission or another investigatory body of the executive. The government proposed that the protection we have is to seek judicial review. I am not sure that is right, but it would be interesting to test that at a later time.

The other opportunity we have is to raise a matter of privilege. As I have outlined to members, we are somewhat constrained by our standing orders from raising a matter of privilege when we are in recess. As I have just outlined, there are some very lengthy periods of recess in which the Legislative Council does not exist and, therefore, cannot

exercise its powers and functions. There may be times when the Council may wish to direct the government to do something—to table a document. Something could arise while we are in recess. The Corruption and Crime Commission could release a report on something of a pressing nature and it may not be in the government's interest for the Parliament to consider the ramifications of that report. In very rare circumstances, we would consider a recall provision that would give greater power to members of this chamber, not solely the Leader of the Government.

The committee's conclusion in the report points out —

> The PPC's consideration of the matter has not resulted in support for the proposed amendment at this time.

The report also points out that other jurisdictions had effectively used the provision—namely, the New South Wales Legislative Council and the Australian Senate, which have very, very similar provisions to the proposal that I put to the Legislative Council in late 2017 and again in 2018. The committee's report does not identify any technical issues with the application of such a provision, simply that the inquiry did not result in support for the proposed amendment at that time.

The committee's report at paragraph 1.20 states —

> The PPC also examined an occasion in the NSW Legislative Council in which an absolute majority of members forced a recall of that House for the purpose of debating a confidence motion in a Minister. Although the PPC noted the potential for such a recall provision to be misused, the attendant public and parliamentary scrutiny that would accompany any recall would mitigate the possibility that such a power would be exercised capriciously or without valid and cogent reasons.

I do not think that provision would be used lightly. I know that during the consideration of the motion to refer this matter to the Standing Committee on Procedure and Privileges, members raised concerns that from time to time there could be political motivations to use the recall of the house as a tool. That certainly has not been the experience in other jurisdictions; the provision has been rarely used in those jurisdictions in which the power exists. Similarly, it requires an absolute majority, which is quite a high and reasonable bar to recall the house and for it to sit. If an absolute majority of the house feels that it is fit for the house to sit, why not afford the house the opportunity to sit? Obviously, those members would need to be satisfied of the public interest that would be served by the house sitting for whatever the purpose may be.

The CHAIR: Hon Martin Aldridge, on the question the paper be noted.

Hon MARTIN ALDRIDGE: Thank you, Mr Chair; I will not take up too much time.

In providing a summary of the report, I feel that this issue will come up again in the future and, unfortunately, the house may need to experience that we are exposed in this respect. It is unfortunate that we have been unable to reach a position of support for this matter at this time. It is interesting to note, and some members will pursue an argument that it is entirely at the government's discretion when the house should sit, that standing order 6 allows the house—of course, only while it is sitting—to amend the sitting schedule by absolute majority. Of course, that is a power we can exercise only when the house is sitting; obviously, it cannot be exercised when it is not sitting. It is interesting to note that despite this government's complaints, there has not been a single-party majority in the Legislative Council of Western Australia since the 1983 general election, some 35 years ago. In those 35 years, not a single party has controlled this chamber.

Hon Kyle McGinn: The LNP—the Liberal–National Party.

Hon MARTIN ALDRIDGE: There is no Liberal–National Party in Western Australia.

Hon Kyle McGinn: Are you sure about that?

Hon MARTIN ALDRIDGE: Yes.

The CHAIR: Order! I will give members on my right the call in just a moment; there is plenty of time.

Hon Colin Holt interjected.

The CHAIR: Members on my left can have the call in due course as well; Hon Martin Aldridge has it for now.

Hon MARTIN ALDRIDGE: Maybe if the Labor Party was a bit nicer to its friends in the Greens, it might be a bit closer to having a majority in this house. But even if it did, it would still fall short. I think that members should reflect on that and that this house, as in all politics, is governed by arithmetic, and if an absolute majority wants to do something, including changing any act of Parliament, or indeed amending the state's Constitution, this house can do that. But, unfortunately, an absolute majority of members of this house cannot recall the house as it stands today. I think it is a missed opportunity and I believe that this issue will be reconsidered in the future. That concerns me as the Parliament considers reinstating the power of the CCC with the view that our right of defence against the privileges that members of Parliament have, arising from their membership of this place, will and can only be exercised while Parliament is in session.

Hon MARTIN PRITCHARD: Very briefly, as a member of the Joint Standing Committee on Delegated Legislation, I thought I would highlight that matters of disallowance do not count down in periods when the house is not sitting;

it actually refers to sitting days. I thought that clarification might be appropriate for members who do not know that particular rule.

Hon NICK GOIRAN: I was not a member of the Standing Committee on Procedure and Privileges that prepared the fifty-fourth report, "Standing Order 6(3): Recalling the Council". I have now had the opportunity to not only familiarise myself with the report, but also hear Hon Martin Aldridge's remarks. I think we could describe Hon Martin Aldridge as the original agitator on this matter, and I have a lot of sympathy for everything he has just said.

If members have not had the opportunity to read this report, I especially encourage them to have a look at paragraphs 1.17 to 1.20 and then in their own mind rationalise how the report then gets to paragraph 1.21. By explanation, I recognise at the outset that something a little extraordinary has happened in that there are five esteemed members of the Standing Committee on Procedure and Privileges and then the house, in its wisdom, co-opted another six members onto the committee. I can imagine how difficult it would be to get 11 members to unanimously agree to a report; nevertheless, that is what has happened here because there is no minority report, findings, recommendations or anything like that. I congratulate the 11 members concerned for finding common ground as they have. However, in my experience, often when people try to seek unanimous agreement, they end up falling to the lowest common denominator, and I think this report is an example of that. By way of explanation, I draw to members' attention that, very helpfully, the Standing Committee on Procedure and Privileges at paragraph 1.17, on page 3 of the report, sets out a number of scenarios in which it considered whether there was any merit in having a temporary standing order. At paragraph 1.17, the committee notes —

- That similar procedures have operated effectively, though not frequently, in the Australian Senate and the NSW Legislative Council;

The very first thing that the Standing Committee on Procedure and Privileges tells us when it is contemplating whether we should have a temporary order along these lines is that there have been similar procedures elsewhere and they have operated effectively, though not frequently. The report then lists the two places that this has happened—the Australian Senate and the New South Wales Legislative Council. The report then states —

- That a temporary order is a time limited proposal that does not result in a permanent change to the Standing Orders; …

That is a statement of fact. In other words, if members do not like the trial, they can always change things afterwards. Thirdly, it states —

- That a temporary order would not disturb the existing capacity of the Leader of the House to recall the Council if required.

It would not disturb any of the existing mechanisms. That is the background. The Standing Committee on Procedure and Privileges then launches into an analysis of whether this house should consider a temporary order along the lines that Hon Martin Aldridge has been seeking. The next two paragraphs look at a couple of scenarios that have occurred elsewhere. In particular, the report looks at a situation in the Senate that occurred, would you believe, on 20 June 1967, when it was recalled to consider a disallowance of postal and telephone charges regulations. The second precedent was on 15 December 2005, when the New South Wales Legislative Council was recalled to consider a bill following riots in Cronulla. I found it quite helpful for the committee to show us some precedents and, if we were going to go down this path, we could see that somebody else has tested it, what it would look like and whether it had caused any great controversy. Clearly, it had not. In paragraph 1.19, the committee draws to our attention that the Cronulla riot recall would have been possible under our existing recall powers in any event.

After having said that we could trial a temporary order, that it would be for only a particular period and that the procedures have operated well elsewhere, including in the Senate and the New South Wales Legislative Council, paragraph 1.20 states —

> Although the PPC noted the potential for such a recall provision to be misused, —

For the first time we find some possibility of a problem —

> the attendant public and parliamentary scrutiny that would accompany any recall would mitigate the possibility that such a power would be exercised capriciously or without valid and cogent reasons.

In conclusion, it launches into —

> However, having carefully considered the precedents established in the Australian Senate, the NSW Legislative Council, and the relatively rare examples of their use of the recall power activated by an absolute majority of members, the PPC is not satisfied that this House should adopt a similar provision at this time.

I cannot find a single sentence in paragraphs 1.17, 1.18, 1.19 and 1.20 that helps me understand how the committee came to the conclusion that we should not adopt a similar provision. It spent a lot of time telling us that this has

happened in other jurisdictions, has not caused a problem and could be a temporary order for a short period. The committee considered all this and even the possibility that the power could be misused but that that would be mitigated anyway, but, by the way, it is not satisfied that we should do this. Hopefully, one of the 11 members can help me—there may well be a simple explanation—because I do not understand how we jump from an analysis of all those other jurisdictions where there has been no problem to a conclusion that the committee is not satisfied we should adopt this at the present time. If this has worked without problems elsewhere, has occurred rarely and would be a temporary order, it is not clear to me why we would not test it.

Having said all that, those are just my comments on the flow of the report. I should say that I am personally a very big supporter of certainty. One of the excellent outcomes of our jurisdiction now having fixed-term elections is that parties, members, and, might I go so far as to say, families can plan their lives. Believe it or not, members of Parliament do have lives outside this place and the impositions on families are significant. Having some modest amount of certainty about when we will have elections—once every four years on the second Saturday in March—is incredibly helpful. I feel for our federal colleagues who are waiting at the moment to find out when exactly the federal election will take place. It would be very painful to wonder whether they can organise something to happen on this day rather than that day. I am glad that we are not in that situation in our own jurisdiction any longer. I use that as an analogy to this situation. It would be highly desirable for all members, if an extensive recess is coming, that we do not find ourselves being called back at short notice. But that is a matter of convenience and, at the end of the day, we need to recognise that it is a great privilege to be a member of this place. If there is an emergency—maybe along the lines of the Cronulla riots—maybe we will have to deal with that and come back here expediently. Of course, that will be able to be done, as Hon Martin Aldridge has said, only in limited circumstances as currently available. I thank members for taking the time to look at this important matter.

Hon ALISON XAMON: I want to make a few comments about this report. I thank Hon Martin Aldridge for his contribution. I think it outlined some of the concerns about why this matter was put forward in the first place. It also outlined some of the thinking that went into it. At some point in the future, there is always a possibility that this matter may be revisited.

I will start by saying that one of the precious conventions of this place that I would be keen to preserve is that of amending our standing orders by consensus, or at least the consensus of a seriously overwhelming majority of members, such as if one or at the most two members objected to something but everybody else was in fervent agreement. I think it is important that we attempt to maintain that convention. That means that sometimes even very good proposals may not be able to get quite the level of support in this place that we would consider to be appropriate to not offend that convention. I find that convention particularly important because I am merely one of four Greens members in this place. By sheer weight of numbers, it would be very easy for the concerns of my party or other parties in this place to be easily bypassed and overwritten, were we not to protect that convention. It is important for members to be mindful of that. Perhaps that might go some way towards explaining to Hon Nick Goiran why the report does not reflect a line of logic that may seem to be the likely outcome one would have expected, considering some of the commentary in the report. I draw members' attention to the specific wording at the conclusion of the report, at paragraph 1.22 —

> The PPC's consideration of the matter has not resulted in support for the proposed amendment at this time. The PPC therefore makes no recommendation in relation to the proposed amendment.

That is a very deliberate choice of words, members. Those words do not suggest an outright refusal to ever consider this matter in the future. Indeed, they also do not reflect an outright rejection of any consideration of the proposed temporary order as it was initially presented. I would suggest that implies that the committee was unable to achieve the necessary consensus as per the conventions of this place with regard to how we change our standing orders.

This is a complex issue. Hon Martin Aldridge has raised a range of legitimate concerns. As has been pointed out, there is precedent in other jurisdictions in which such a provision has been employed, not only successfully, but also, fortunately, rarely. That is a very important consideration as well. We need to acknowledge that we also want to preserve the right for governments to govern. A government of the day may be concerned about the prospect of a sporadic recall of the house, perhaps for the purpose of mischief. However, on the flip side, a government may indulge in a certain level of mischief by not allowing the house to sit and exercise its authority to ensure that wrongdoing is not being undertaken. A number of examples have been given in this place of the sorts of matters that may warrant an urgent recall of the house. There is an inherent tension in this place between making sure that the government can govern, and at the same time ensuring that the government is able to be held to account.

Personally, I have a lot of sympathy for the point that was made by Hon Nick Goiran about the need for certainty for people who have families and other commitments. It would be most unfortunate if we were to recall the house at a time when members in good faith have gone overseas for holidays, or have had surgery, or whatever. We all have complexities in our lives that we need to be able to manage, in addition to the huge number of hours that we perform in our roles as members of this place.

I say from the outset that the Greens are unlikely to become a party of government at any point in the near future. I know that sounds strange, but I am suggesting that may be the case. I am also suggesting that it is not likely that the Greens will be seeking to enter into government with another party at any point in the near future.

Hon Nick Goiran: Not likely?

Hon ALISON XAMON: No, not likely. I mention that because it almost becomes an argument for why the Greens would support an amendment such as this. That is because it is unlikely that in the near future we will be in government and will need to worry about an opposition and a crossbench that might try to recall this place against our wishes. However, having said that, we are also a party that respects the conventions of this place, and, as such, we will always err towards enabling members to abide by the conventions of this house.

One of the things that this report has done is put a shot across the bow to this government and future governments that the expectation of every member in this place is that the capacity for the government to recall the house is a power that at the moment is reserved by only the government and is effectively given to the government on trust, and that is what we expect will happen. I note that the original impetus for this debate was a lack of trust. Therefore, it was beholden on this government to demonstrate that any trust that was imbued in it was indeed used correctly. I would like to conclude my comments on that particular point. This is a matter that can be revisited at any given time. It is the case that, right now, members are choosing to support the convention of not changing the standing orders unless there is broad consensus. The decision of the house has been to enable the government of the day to maintain its sole authority to recall the house. I point out that that can be removed at any time. However, whether there is an impetus to do that is up to the government and how it chooses to exercise that power.

Hon SIMON O'BRIEN: I want to advise the Committee of the Whole House of a few things that might assist in its contemplation of this matter. The conclusion of this report, at paragraph 1.22, states in part —

> The PPC therefore makes no recommendation in relation to the proposed amendment.

As Hon Alison Xamon has suggested, the conclusions reached by the Standing Committee on Procedure and Privileges are carefully worded. If members want to find out a bit more about the subject that we are talking about, I suggest that they read the report again, and this time read between the lines, mull the words more closely, and contemplate all its content. The report is fairly brief, so that can be easily done. They might then find that an old adage rings particularly true in this case; that is, before we search for the answer, we need to work out what the question is. I will come back to that question in conclusion in just a moment.

A few things have been mentioned in the course of this debate that are worth noting. We might find it informative to look at the report and at the experience and current practice in a range of jurisdictions. However, in general, what we discover is that legislatures either do not have a procedure along the lines of what has been suggested by Hon Martin Aldridge, or may or may not have provisions for recalling a house of Parliament in some circumstances outside of the scheduled sitting time. Clearly, all those Parliaments are getting by okay under those arrangements. Regardless of whether they have a mechanism for special recall of the house by means of the Speaker or Presiding Officer receiving a request from government, or whatever it might be, everyone seems to get on fine. We then come to the question, "Hang on. How urgent is it that we need such a provision as was suggested by our colleague?" We then note that the Senate was in fact recalled in circumstances in which an absolute majority of members petitioned the President to do so.

That was in 1967. I do not know when the Senate is next going to do it, but if it did so tomorrow, I wonder whether once every half century is really that significant. Extraordinary circumstances arise in politics a lot more frequently than that. That matter, of course, was to deal with some regulations relating to postal and telephone charges. Most members here would have some awareness of what those sorts of things are, although they seem to have disappeared these days, at least in the form contemplated in 1967.

The other occasion was in 2005, when the New South Wales Legislative Council was recalled on 11 and 12 December 2005 to pass urgent legislation. The reason given was that it was in response to public disturbances in Cronulla and other parts of Sydney. In that latter example, the Standing Committee on Procedure and Privileges noted that the recall was prompted by both non-government and government members. In any case, the recall could have been achieved by the usual request to the President by the Leader of the Government in the Legislative Council, particularly when there was cross-party support for a recall in order to consider a government bill. I do not think that particular example really counts in advancing the prospect that the Standing Committee on Procedure and Privileges was asked to contemplate and report on. I do not know the purpose of that particular New South Wales legislation that made it so urgent or why there was not sufficient capacity already in the statutes of New South Wales to deal with riots and public disturbance at the time. There must have been some sort of political imperative and desire by all concerned to demand that something be done. That is probably not the best response, but one that was obviously deemed necessary by the parties involved at the time.

So we have one substantive example of the Senate, an upper house—a house of review it is, too—being recalled at the petition of an absolute majority of members. Only one, and that was over half a century ago. How often has

this need been identified in similar terms here? As far as I am aware, never. However, the honourable member who proposed this suggests that it would be a useful option to have available to us. To that I would say: do we need provisions that are unlikely to ever be used, that we never seem to have been materially short of, and when no emergency or deficiency has come to light that would say that we should have had this particular capacity? To all of that I would say that that, of itself, is no reason to not have such a capacity. Other aspects of our standing orders are very rarely or have never been called into operation. Not so long ago we contemplated a standing order provision to deal with the expulsion of a member from his seat, from the house. That has never happened. One could make out a case for why we would have such a provision, but without referring overly to that particular debate, that of itself is no reason to not have a provision. We will not go into the whys and wherefores of that now, but there is a parallel that is relevant to this debate.

In relation to the particular matter Hon Martin Aldridge was concerned about—the possible reregulation of an offending charge while the house was in recess—that has been known to happen. However, I do not think that is a particularly strong reason to advocate for this particular recall function. It is not to say that we should not have a recall function, but I do not think it is a particularly strong one. If a government is going to behave in that sort of cavalier fashion and say, "Right; we'll wait until the Parliament's not sitting and then we'll put in some unpopular regulations", it is going to do it anyway. I have seen successive governments do it—governments from both sides, to their discredit. They have gone out the day after this house has disallowed regulations and re-gazetted identical regulations. So much for the disallowance power and the power to recall simply to disallow, if a government is going to thumb its nose at this place as we have seen in the past! But, again, that does not mean that Hon Martin Aldridge's concerns and his proposed remedy are without merit. That leads me back to where I started, when I said I would offer an alternative in conclusion, if the house would like to hear it.

The DEPUTY CHAIR (Hon Martin Aldridge): The question is that the report be noted. Hon Simon O'Brien.

Hon SIMON O'BRIEN: I thank members for their courtesy.

What should a member who is inclined to pursue this matter do about it? The Standing Committee on Procedure and Privileges, via its report, has not recommended anything to the house about either passing such a provision or not passing such a provision. It is silent on the question of whether to adopt or to not adopt a proposed order. That leaves it back with the members of this place, with the house itself, where any such decision could, should and does ultimately reside. What might a member like to do if they are of a mind to do so? Perhaps they could bring on a motion for substantive debate and let us see what sort of absolute majority or otherwise exists in the house. That is how we let the house decide. Members have the benefit of a very useful PPC report to help them do so. I would offer one word of caution, though, which I hope would be self-evident: that the suggestion to try a temporary order—to try it to see whether it works out—works when we are contemplating a variation to speaking times or whether to have afternoon tea at a particular hour or something like that, which are occasions that are visited frequently, but a temporary standing order for something that has been applied only once over 50 years ago in another Parliament is not really going to be much of a test, because I suspect that the recall of this house by an absolute majority of its members, if required, is unlikely to happen in the course of, say, a six or 12-month trial. If members want to collectively go down such an avenue, I suggest we go in for a penny and in for a pound—that we go holus-bolus. Of course, that will be a debate for another day, but I hope my comments have given members something to think about in marshalling their own thoughts on this matter.

Question put and passed.