

Forty-fourth Report — “A Matter of Privilege Raised by Hon Sue Ellery MLC” — Motion

Resumed from 8 November on the following motion moved by Hon Adele Farina —

That the recommendations contained in the forty-fourth report of the Standing Committee on Procedure and Privileges, “A Matter of Privilege Raised by Hon Sue Ellery MLC”, be adopted and agreed to.

THE PRESIDENT (Hon Barry House): When this report was tabled on 8 November 2016, the house agreed to the following orders governing the procedure for debate and voting on the recommendations contained in that report. The order was —

- (a) each recommendation is to be put as a separate question; and
- (b) pursuant to standing order 22(2), the time limits relating to Committee of the Whole House apply.

This will permit all members to have unlimited periods of 10 minutes each when debating the recommendations. Hon Adele Farina was given leave to continue her remarks at the next sitting of the house and has the call. This is a bit unclear in our procedures, but I will treat this like a second reading debate in a sense in which members can canvass all issues on the report and then I will put the questions independently.

Recommendation 1 —

HON ADELE FARINA (South West) [2.17 pm] — without notice: Pursuant to recommendation 1, I move —

That Mr Stephen Home be adjudged guilty of a contempt of the Legislative Council.

I am moving recommendation 1 at this point. My understanding is that then we are debating this issue and putting recommendation 1 and then we move on to the next recommendation. Can I seek your guidance on this, Mr President, because I do not want to do the wrong thing?

The PRESIDENT: The question before the Chair is recommendation 1, “That Mr Stephen Home be adjudged guilty of a contempt of the Legislative Council.” In debating that question, I will allow a general debate on the whole report. I assume that members will assume that there is some overlap in the recommendations and findings, so therefore under the first question I will allow a general debate on the whole report. The question is that Mr Stephen Home be adjudged guilty of a contempt of the Legislative Council.

Hon ADELE FARINA: I understand that we are under time constraints because we have a lot of business to do and I will focus my comments on the committee’s third term of reference and the Leader of the Opposition will focus her comments on the first two terms of reference of the committee.

The committee’s third term of reference was —

Did any other person or body commit a contempt of this House or any breach of its privileges?

That takes us to the second-last chapter, chapter 8, of the committee report. Members will be aware that when the Corruption and Crime Commission released its report of its inquiry into this matter, we became aware that the CCC had questioned Ms Rachael Turnseck about some emails and draft answers to parliamentary questions and the actual answers lodged in the house. That raised questions about a possible breach of parliamentary privilege that needed to be investigated. Ms Turnseck was interviewed by the Corruption and Crime Commission on three separate occasions and it was on only that last occasion that the question about the draft answers to parliamentary questions and the emails were raised. We know from the CCC report that counsel for the Corruption and Crime Commission was in possession of the two draft answers to question without notice C192 prepared by Mr Home and the associated emails between him, Ms Turnseck and others. These were used by counsel to question Ms Turnseck on the last occasion the CCC interviewed her. The outcome of this evidence gathering by the CCC was the forming of its opinion of misconduct regarding Ms Turnseck and the inclusion of this opinion in the report provided to the Premier, which he subsequently tabled.

The Standing Committee on Procedure and Privileges acknowledges that if it were not for the fact that the CCC undertook this investigation and tabled its report, we would have been none the wiser that a potential breach of parliamentary privilege had occurred. The committee is cognisant of that and appreciates that. Obviously if the CCC had not undertaken that investigation, we would not have been aware of the possible contempts, so we are very grateful for that. However, the CCC is required to work within the law. There are very strong privileges and rights that need to be protected in this Parliament, which ensures the open and frank debate of issues in this place. Article 9 of the Bill of Rights provides —

‘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.’

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The committee wrote to the CCC asking for its comment about the committee's findings. The CCC's submission is found at appendix 5, as is the committee's response to that submission. Fundamentally, the CCC has argued that it is not a place out of Parliament and that these words should be read down so as to limit the application of article 9 to courts or tribunals, or proceedings where a person is exposed to the risk of some kind of sanction, determination or finding that has an operative legal effect. The CCC also argued that the emails and draft answers to those parliamentary questions were not proceedings in Parliament. It based that on some very old court decisions. I recommend members read the CCC's submission. It presents a very circular argument and one that really cannot be supported because it is just simply legally wrong.

The committee's inquiry examined whether any of the CCC's actions resulted in it committing a contempt or a breach of the privileges of the Legislative Council. Its particular focus was on article 9 of the Bill of Rights. The first question the committee considered was whether the CCC is a place out of Parliament. Clearly, the CCC is not a court. The committee noted that Western Australian royal commissions have been accepted as a place out of Parliament for the purposes of article 9. In considering a range of legal questions related to term of reference 3, the committee sought legal advice from Bret Walker, SC. His legal opinion is found at appendix 6. It is a very detailed legal opinion. Again, I recommend members read that because it sets out very well the legal aspects in relation to the application of article 9 in these particular circumstances.

In his opinion to the committee, Mr Bret Walker, SC, was emphatic in his view that the CCC was "a place out of Parliament" for the purposes of article 9. I quote from his opinion —

The CCC, like other tribunals, royal commissions and various investigative bodies of the executive, is clearly a 'place out of Parliament'. Article 9 plainly covers a place as official as the CCC in which what amounts to executive power is used separately from Parliament.

As a result of that legal advice—the committee was also strongly of this view in any event—the committee brought down finding 15, which states —

That the Corruption and Crime Commission is a place out of parliament within the meaning of Article 9 of the *Bill of Rights* ...

Reading down those provisions, as suggested by the CCC, was an error.

The second question the committee needed to consider was whether the draft parliamentary questions used by the CCC in its investigations were proceedings in Parliament and therefore subject to article 9 immunity if questioned or impeached. Paragraph 8.15 on page 58 of the report details an excerpt from Erskine May that describes the expression "proceedings in Parliament". It states —

... some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to forms of business in which the House takes action, and the whole process, the principle part of which is debate, by which it reaches a decision. An individual member takes part in a proceeding usually by a speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee ... Officers of the House take part in its proceedings principally carrying out its orders, general or particular. Strangers also may take part in the proceedings of the House, for example by giving evidence before it or one of its committees, or by securing presentation of a petition.

The committee's report looks at a number of legal decisions on the definition of "proceedings in Parliament". It particularly looked at the decision *Prebble v Television New Zealand*, which looked into the Parliamentary Privileges Act 1987, a commonwealth act, and provides a good guide for the application of the definition of those words. In that case, the court determined that proceedings in Parliament included the preparation of a document for the purposes of, or incidental to, transacting any business of a house. It also found that bringing documents into existence with such purpose, or for those purposes, the collection or assembling of those documents, or coming into possession of them, are all circumstances capable of amounting to proceedings in Parliament. Importantly, the court observed that to be effective article 9 immunity was required to be retrospective; that is, it needed to apply to documents that related to matters that were no longer current business before the Senate.

In applying that definition, the committee was certainly inclined to the view that this was a proceeding in Parliament. The advice from Bret Walker was unequivocal in that drafts of parliamentary questions are proceedings in Parliament for the purposes of article 9 of the Bill of Rights. I quote from Bret Walker's legal opinion —

...the expression 'proceeding in parliament', will at its most limited scope include the preparation of a document by or on behalf of a Member for the purposes of transacting parliamentary business. This will include cases where the document —

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The PRESIDENT: Hon Adele Farina has moved that the recommendation contained in report 44 be adopted. I will give the call again to Hon Adele Farina.

Visitors — Como Combined Probus Club

The PRESIDENT: While there is a break, I welcome members of the Como Combined Probus Club to the Legislative Council chamber. Welcome to the proceedings of the Legislative Council.

Debate Resumed

Hon ADELE FARINA: I was quoting the legal opinion of Bret Walker, SC. I will start again —

...the expression ‘proceeding in parliament’, will at its most limited scope include the preparation of a document by or on behalf of a Member for the purposes of transacting parliamentary business. This will include cases where the document is a draft and never actually used in any parliamentary proceeding.

At page 62 of the report, the committee makes the comment —

Mr Walker’s view has satisfied the Committee that the drafts of Question without Notice C 192 are ‘proceedings in parliament’ within the meaning of Article 9 of the *Bill of Rights 1688* (UK). In addition, emails exchanged between Mr Home and Ms Turnseck to enable the drafts of Question without Notice C 192 to be formulated, and to which the parliamentary questions and draft answers were attachments, are intrinsically part of this drafting process and, in the Committee’s view, are similarly protected.

That brought the committee to finding 16, which states —

That Legislative Council Question without Notice C 192, the draft answers and associated email exchanges between public officers tasked with constructing the answers and providing them to Members of Parliament for their consideration and eventual answer in the Legislative Council were proceedings in parliament within the meaning of Article 9 of the *Bill of Rights 1688* (UK).

That then took the committee to determine whether the questioning by the CCC about those documents amounted to questioning or impeaching a proceeding of Parliament. Clearly, we understand that it is absolutely critical that we protect this right and immunity that the Parliament has in order to ensure that the information provided to the house is always factual and correct. In looking at this question, the committee relied on the evidence provided by the CCC and its report, which was provided to the Premier and not tabled in this house, but the Premier subsequently tabled the report in this place. In relying on all that information, the committee looked into the meaning of “impeached” or “question” through past legal decisions and went through the history of how the CCC used those questions, draft answers and emails in questioning Ms Turnseck on that third occasion when it interviewed her. The report states —

8.42 The Committee is of the view that the two draft answers to Question without Notice C 192 were clearly each a ‘*proceeding in parliament*’ and therefore by their very nature were subject to parliamentary privilege. The final version of the answer to Question without Notice C 192 given as Question without Notice No. 176 in the Legislative Council was also a ‘*proceeding in parliament*’. The use by the CCC of the draft answers did all of the things prohibited by Article 9 in that this use:

- (a) questioned the truth of the draft answers which formed part of a proceeding in parliament;
- (b) sought to impugn the credibility, motive, intention or good faith of Ms Rachael Turnseck; and
- (c) sought to draw inferences and conclusions about Ms Turnseck’s conduct wholly or partly from those proceedings in Parliament.

8.43 Furthermore, a conclusion as to whether the actions of any person resulted in the Legislative Council being misled by an answer to a parliamentary question is a matter falling within the exclusive jurisdiction of the Legislative Council as a House of Parliament. The deliberate misleading of a House of Parliament is a contempt. The contempt jurisdiction of a House is not limited to its Members.

It was very important for the committee to establish these facts. In the opinion provided by Bret Walker, SC, he made it very clear that it makes no difference to the issue of whether questioning or impeaching parliamentary proceedings has occurred that there is a consistency of opinion in respect of a particular matter. He went on to state —

In particular, the point needs to be rejected as a matter of doctrine that something is not calling into question or impeaching unless it is necessarily at odds with, or an inquiry that is directly in opposition

to, the expressed will of the House of Parliament. That is not the way the immunity or prohibition works. The investigation and expression of opinion by the CCC in its report in this case bore no resemblance to the limited or specific uses that some courts have sometimes held can be made of parliamentary utterances. I have no doubt that the CCC's investigation and report was a calling into question or an impeachment in an "other place" of parliamentary proceedings, not least by undertaking an investigation and expressing conclusions about the merits and propriety of parliamentary conduct.

The committee's finding 17 states —

That the use by the Corruption and Crime Commission of *proceedings in parliament*, being the drafts of answers to Question without Notice C 192 and associated emails, to form an opinion of misconduct against Ms Turnseck impeached or questioned those proceedings. This is contrary to the immunity provided by Article 9 of the *Bill of Rights 1688 (UK)*. The actions of the Corruption and Crime Commission therefore constituted a breach of parliamentary privilege.

The next question for the committee to look at was whether this breach by the CCC resulted in a substantial interference with the proceeding of the Legislative Council. The committee gave this very detailed consideration. The committee has no doubt that the actions of the CCC were undertaken in good faith, notwithstanding the fact that it exceeded its jurisdiction. That is something I am going to repeat, because members need to understand that, in this particular instance, the actions of the CCC exceeded its jurisdiction. The CCC cooperated with and provided invaluable assistance to this committee, and the committee is very grateful for that support and assistance provided, in particular the material on which the committee relied in its investigation. The committee's view is that the actions of the CCC have not on this occasion resulted in any substantial interference with the performance of the Legislative Council's functions and nor have they had a tendency to do so. But the committee wants to stress that future actions by the CCC of infringing the privileges of the Parliament may not have the same benign outcome. The actions by the CCC in this particular matter should therefore not be treated by it as a precedent or be repeated. We have very clear and separate areas of jurisdiction and the CCC needs to understand and recognise that and needs to have respect for them.

That brings us to finding 18, which states —

That on this occasion the use by the Corruption and Crime Commission of the drafts of Legislative Council Question without Notice C 192 and associated emails did not substantially interfere with a proceeding of the Legislative Council.

There is no doubt in the committee's viewpoint that there was a breach of article 9 of the Bill of Rights by the CCC. The CCC exceeded its jurisdiction, and although there was no substantial impact on the proceedings of Parliament in this instance, the CCC needs to understand the limits of its jurisdiction and be very, very careful not to impinge on the jurisdiction that belongs rightly with the Parliament.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [2.37 pm]: I want to begin my comments on this forty-fourth report of the Standing Committee on Procedure and Privileges, "A Matter of Privilege Raised by Hon Sue Ellery MLC" by thanking you, Mr President, for chairing this committee inquiry. I was substituted onto the committee to replace Hon Kate Doust on this inquiry. I want to thank the clerk and the staff of the committee for their assistance. I want to thank members of the committee as well. We tried to reach positions that we could all agree to and we have achieved that. It was no small effort on the part of everybody and I appreciate it. In my capacity I do not sit on any standing committees. I think they are an important and invaluable part of this house's work and I miss the collegiate relationships that can be developed when we get to know someone a bit better by working with them on the committee, so I thank members of the committee for the opportunity to do that, although, of course, I wish it was in different circumstances.

As has been set out in the committee's report and just referred to by Hon Adele Farina, this matter came to our attention as a result of the report by the Corruption and Crime Commission. If people in the future want to understand what happened, I recommend that they read this committee's report and the CCC's report, "Report on the Investigation of Alleged Public Sector Misconduct in Relation to an Incident Involving the Hon. Troy Buswell that Occurred on 23 February 2014", together. That is how they will understand exactly how we came to reach the position that we did. When that report was tabled in the Parliament and I read it, it surprised me that the CCC took the path of action that it did, which was firstly, not to table it in the Parliament. It made findings about information that had been incorrectly and inaccurately provided to the Parliament. It surprised me that the course of action the CCC chose to take was not to table the report in the Parliament, but instead to give it to the Premier, and it was indeed the Premier who ensured the document was tabled in the Parliament. Once the report was tabled, it became clear that the CCC had uncovered what could constitute a contempt so I brought that to the attention of the house. We now find ourselves in the position of having a report to reflect that. Ms Rachael Turnseck and Mr Stephen Home were part of the group of staff who were

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involved to greater and lesser extents in preparing answers to three parliamentary questions I lodged on 12 March 2014. Ultimately, the answer was signed off by the Premier and delivered by the Leader of the House in this place. An answer was provided that was inaccurate and incorrect in two respects. In the first draft of the answer that was prepared, Mr Home included reference to the fact that Ms Turnseck had spoken with members of Mr Buswell's family. At her request he deleted reference to the family even though he knew she had spoken to members of the family. Ms Turnseck knew, and the CCC revealed, that in addition to members of Mr Buswell's family she had also spoken to a Mr Leo Gibbons. Mr Home did not know that. In chapter 3, the report sets out a set of general guidelines to govern how we should assess whether a contempt or a breach of parliamentary privilege has occurred. This is a really useful chapter. Apart from anything else that is in this report, I would urge members to read it even if they are not interested in anything else in the report. It is quite a useful guide. Over the years, parliaments in the Westminster tradition have tried to avoid codifying matters of contempt and parliamentary privilege to enable a case-by-case approach to be taken and to ensure that the rules are not made so narrow that they do not deal with unforeseeable situations, nor are the rules made so broad as to capture things that were, in fact, never knowingly or unknowingly committed as a contempt.

The matters relating to Mr Stephen Home are set out most usefully on pages 31 to 37. Mr Home was invited to appear before the committee in private hearing, which he did. When he appeared before us, he provided a statement to us. That statement is attached to one of the appendices of the report. His evidence was that he knowingly amended his original draft. The original draft had reference to Ms Turnseck speaking to members of Mr Buswell's family. He deleted that reference at Ms Turnseck's request. Because of the telephone conversation that he had with Ms Turnseck on the day he prepared the answer, he knew that she had spoken to members of Mr Buswell's family. His statement at pages 88 to 89 provide the following —

I spoke to Ms Turnseck before drafting a response. In that conversation she informed me that she had had discussions with two members of Mr Buswell's immediate family in the period between 23 February and 10 March 2014.

At 12.47 pm I circulated an email to all of those on the distribution list, stating:

Draft for urgent comment please.

I have not bothered to address any conversations past 10 March's announcement as clearly and obviously many conversations would have been had by everyone regarding what was publicly stated by the Premier on the 10th.

Steve

I attached a suggested answer to PQ C192 reflecting my conversation with Ms Turnseck as follows:

- 1. No. The concern of the Premier and his office has been the welfare of the Treasurer.*
- 2. Prior to the Treasurer's resignation, no, other than with the Treasurer's direct family.*

On page 89 the statement provided to the committee continues —

Ms Turnseck responded as follows at 12.54pm:

Hi S

My preference is to make no mention of Troy's family

Ta

I responded at 12.55pm, stating:

OK, will delete.

Steve

I subsequently amended the answer to part 2 to read:

Prior to the Treasurer's resignation, no.

Further in his statement he goes on to state —

My rationale for agreeing to remove the reference to discussions by Ms Turnseck with Mr Buswell's family derived from the context of the questions previously asked in the Parliament and the inferences and allegations being made at that time ... Having regard for the nature of subsequent questions and allegations regarding Mr Buswell and the events of February and March 2014 I accept that this assumption was misplaced.

I want to talk a little bit about who is on the email list. It is a list of people who were involved to a greater or lesser extent in preparing an answer. The list is set out in paragraph 5.23 on page 37 of the report. It includes the

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following: Zak Kirkup, Narelle Cant, Brian Pontifex, Dixie Marshall, Rachael Turnseck and Roxana Pike. That list is important; I want to come back to it later and talk about how we determined from those people the part they played in preparing the answer.

The matters relating to Ms Turnseck are set out in chapter 6. Again, Ms Turnseck was invited to appear before the committee by appointment in private hearing, which she did. She also prepared and brought with her a statement which is part of the committee's report. During the questioning of Ms Turnseck during her appearance before the committee, she made the following points. As I said, they are set out in chapter 6. Paragraph 6.15 states —

Further to that statement, Ms Turnseck advised the Committee that other staff should have known that the answer to be provided to the Council was literally incorrect or factually incomplete:

The PRESIDENT: The question is that the motion be agreed to. The Leader of the Opposition.

Hon SUE ELLERY: Thank you, Mr President. The report continues —

Hon SUE ELLERY: Okay. So, if I go further on in the statement that you provided us with today, on the second page, I guess in the top third, there is a paragraph that begins "In the first draft answer to question 2" and you go on to say, the third sentence in —

Everyone who read this email and the draft answer knew that I had spoken with Mr Buswell's family members.

Further on, Ms Turnseck states —

Ms Turnseck: Obviously, the Premier, when I had had a conversation with him, knew that I had been in touch with Troy's family. I would have said that. Similarly, with Brian and Narelle.

There follows some questioning by Hon Martin Aldridge —

Hon MARTIN ALDRIDGE: The answer to, I think, a question from Hon Sue Ellery was that you were not able to recall a conversation with Mr Home on the day that that question —

Ms Turnseck: No, I do not recall that.

Hon MARTIN ALDRIDGE: But you are certain that you did speak to the three people you mentioned—the Premier, Ms Cant and Mr Pontifex—in relation to your contact with Mr Buswell's family?

Ms Turnseck: Yes ...

Further on in the hearing she was asked whether she had mentioned Mr Gibbons —

Ms Turnseck: Look, I do not recall directly mentioning Leo in conversations. I am assuming they would have been aware that I had been in contact with the electorate office, although I do not recall having that specific conversation.

The committee made a series of findings about her. In respect to Stephen Home, the committee found that during a telephone conversation that occurred between Ms Turnseck and Mr Home, she revealed that she had discussed the events in the days leading up to the former Treasurer taking personal leave with members of Mr Buswell's family. The committee also found —

That Mr Stephen Home consciously and deliberately amended the draft answer to Legislative Council Question without Notice C 192 to delete the reference to the former Treasurer's family at the request of Ms Rachael Turnseck.

The committee went on to find —

That Mr Stephen Home knew that by amending the draft answer to Legislative Council Question without Notice C 192 to delete the reference to the former Treasurer's family the answer provided to the Legislative Council would be incomplete and misleading.

The fourth finding that the committee made about Mr Home states —

That the deletion by Mr Stephen Home of the reference to the former Treasurer's family in the answer he drafted to Legislative Council Question without Notice C 192 resulted in the answer provided to the Legislative Council being incomplete and misleading.

Finally, in respect to Mr Home, finding 5 states —

That Mr Stephen Home's actions in relation to ... Question without Notice ... constituted a substantial interference with a proceeding of the Legislative Council.

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A similar set of findings was made about the evidence provided by Ms Rachael Turnseck. Finding 9 states —

That Ms Rachael Turnseck consciously and deliberately withheld relevant information from Mr Stephen Home regarding the material fact that she had spoken with the former Treasurer's electorate officer Mr Leo Gibbons about the events in the days leading up to the former Treasurer taking personal leave.

Further, finding 10 states —

That Ms Rachael Turnseck knew that her actions in consciously and deliberately withholding relevant information from Mr Stephen Home regarding her conversation with Mr Leo Gibbons would result in an incomplete and misleading answer being provided to the Legislative Council.

In respect to the information she did provide, the committee accepted Mr Home's evidence. Ms Turnseck could not recall the telephone conversation. We accepted Mr Home's evidence that a telephone conversation occurred. Some form of communication had to occur for him to be able to draft the answer. At finding 7, the committee states —

That Ms Rachael Turnseck subsequently indicated her preference to Mr Stephen Home to omit from his draft answer ... any reference in that draft to the former Treasurer's family and Mr Home did in fact make this omission.

Finding 8 states —

That Ms Rachael Turnseck knew that Mr Stephen Home's acceptance of her request to omit from the draft answer ... the reference to the former Treasurer's family would result in an incomplete and misleading answer being provided to the Legislative Council.

As set out on page 93 of the report, at the end of her statement she said —

... I accept that I should have advised Stephen Home I had spoken with Mr Gibbons, as I had advised him and others that I had spoken with members of Mr Buswell's family. Even if I had done this, I would still not have wanted Mr Gibbons or members of Mr Buswell's family mentioned in the answer. They were family or, in Mr Gibbon's case, as close as family. Upon reflection, I accept that I should have provided an answer something along the lines of: no, other than with members of Mr Buswell's family and a close personal friend. Or better still: not with anyone in the Premier's office, with any member of Parliament or anyone in Liberal Party headquarters. I apologise that the answer provided was literally incorrect.

One of the other matters that the committee examined was whether anybody else had committed a contempt. That was term of reference 3 that Hon Adele Farina referred to, and she clearly set out the issues with the Corruption and Crime Commission and its relationship with Parliament.

Earlier in my comments, I indicated that a number of people were involved in the email trail in the preparation of the answer and I identified those people. The committee wrote to each of those people and asked them a set of questions. We provided them with transcripts of the evidence in which Ms Turnseck said that everybody knew and then asked them a series of questions, and those are all set out in appendix 4 of the report. I want to make some comments about the Premier's response. We wrote to the Premier on 27 July in similar terms to the letters that we had sent to everybody else. We set out the evidence we had from Ms Turnseck in which she indicated that the Premier knew that she had been in touch with Troy's family and her view that Brian and Narelle also knew. We provided him with copies of the chain of emails referred to by Ms Turnseck and an extract of the *Hansard* and we asked him a set of questions. The first one was —

Were you aware that Ms Rachael Turnseck had spoken to members of Mr Buswell's family?

The answer provided by the Premier to the committee on 11 August 2016 and set out on page 99 of the report is —

I would expect in matters such as this a person's family would be advised.

I think, generously, that is a cute answer. It may well be described by others in different terms. The reason I want to focus on that particularly is that this was an inquiry the heart of which was about answers provided to Parliament. Committees, and in particular this committee, as the senior committee of this house, are effectively the Parliament, so when we asked the Premier a very serious question and effectively got a non-answer, I was deeply disappointed. Frankly, I think it demeaned the Premier, because he could have just said, "I do not remember" or "No, I didn't" or "Yes, I did." In fact, he chose not to answer the question from a committee conducting an inquiry into making sure that we get proper answers to parliamentary questions. I think there is some irony in that. In chapter 7, paragraphs 7.7 and 7.8 state —

The Premier's answer, as set out in Appendix 4, to that question was "*I would expect in matters such as this a person's family would be advised*".

The Committee notes that the Premier did not either refute or accept Ms Turnseck's evidence that he had been told by her that she had spoken to members of Mr Buswell's family.

This is an important report not because matters of state turned on the actual detail of the questions, but because it reinforces the nature of the expectation that Parliament shall not be impeded in its business by people who knowingly seek to withhold or mislead or who deliberately construct answers that are not true to the best of their knowledge. It is important that Parliament take note of these matters. It is important that we accept the recommendations. On behalf of the opposition, I indicate that we accept each of the recommendations in this report.

The PRESIDENT: The Leader of the Opposition.

Hon SUE ELLERY: There are lessons for all when providing answers. If in doubt, do not provide it. People should do their best to provide the best and most accurate answer that they are able to provide. In this case, I think Stephen Home made a judgement call that it was okay to delete certain information because it was about family members. His judgement was wrong. In this case, Ms Turnseck decided that she would just not mention that she had spoken to Mr Leo Gibbons. That was not right. She made a judgement call that it was not appropriate to mention Mr Buswell's family. Those judgement calls were not theirs to make. When Parliament asks a question, people need to provide an accurate answer. All members, whatever side of the house they sit on now, should bear the recommendations of this report in mind in the future.

HON PETER COLLIER (North Metropolitan — Leader of the House) [2.58 pm]: I will make some comments specifically on recommendations 1 to 4 of the report, and the Attorney General will make some comments about recommendation 5 specifically on the proposed memorandum of understanding between the Corruption and Crime Commission and the houses of Parliament. I take on board the comments of the Leader of the Opposition. I think she made some very salient points in her final comments about the accuracy of questions. That is fundamental to the whole basis of the recommendations that have been established by the committee, and I thank the committee for the work it has done.

My comments will obviously be specifically about recommendations 1 to 4, which deal with Mr Stephen Home and Ms Rachael Turnseck and their evidence, and also the associated recommendations. Fundamentally, we are dealing with the sanctity of the Parliament, parliamentary privilege and ensuring that all the information provided to Parliament is accurate and reflects facts, not innuendo. That associated accurate information is an imperative component and assumption of the parliamentary process. All members within this chamber at the moment will fully appreciate and acknowledge that. That is one aspect of it. This particular report deals with two aspects: first of all, the sanctity of the Parliament and ensuring that accurate information is presented. The other issue the committee had to consider, which was also a key component in answering those questions, was the moral consideration that some may take when answering a question. I am not saying that is necessarily acceptable, but it does sometimes occur and it evidently occurred here. It is vital that the moral consideration does not compromise the truth. Again, it is a learning experience, as Hon Sue Ellery pointed out. All answers must reflect the facts and they must at all times be accurate. That is captured in two of the conclusions that I will briefly comment on.

The first conclusion states —

The Committee has found that both Mr Stephen Home and Ms Rachael Turnseck have committed contempts of the Legislative Council. The contempts in question were the conduct by each of them in deliberately constructing an incomplete, misleading and ultimately false answer to a parliamentary question. This conduct is a substantial interference with the parliament's information gathering and accountability functions. The facts supporting these findings are set out in this report. The available evidence does not support a finding of contempt or breach of privilege against any other natural person.

Conclusion 9.6 states —

By adopting the findings and recommendations of this Committee and enforcing any related orders, the Legislative Council will remind all those involved in parliamentary proceedings to conduct themselves with honesty, fairness and impartiality when carrying out their official duties.

That particularly deals with the first component of my point; that is, of the accuracy of questions.

It has been agreed by Mr Home and Ms Turnseck—it is contained within the report—that the information provided in question without notice 176 on 12 March 2014 was not entirely accurate; so, strictly speaking, this equates to a contempt of Parliament. The implications are significant, particularly in a ministerial representative

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capacity or a representative capacity for a parliamentary secretary. Fundamentally, of course, the response I provided to Parliament was inaccurate, which was the point Hon Sue Ellery was pointing out. At the first opportunity upon discovering the inaccuracy, I provided a correction to Parliament on 16 March 2016, as any member, minister or parliamentary secretary would.

The implication here is that a minister in a representative capacity must have confidence in the accuracy of the answer or it could potentially lead to the reluctance of the representative minister to answer questions. When it was first identified I mentioned that we do not want to get to a point that a minister or parliamentary secretary in a representative capacity does not have confidence in the answers, because that would undermine the integrity of question time. That is why this issue is significant. From that perspective, I will conclude on that aspect of comments and the fact that the accuracy of answers to questions is absolutely vital. It is paramount to maintain the integrity and sanctity of the parliamentary process.

I would also like to make some comments on the moral consideration that came into focus through this report and what occurred with the inaccuracy of response. I rely on the comments of Mr Home and Ms Turnseck. First of all, Mr Home's report to the committee states, in part —

I would also draw to the Committee's attention the fact that the procedures and timeframes for questions asked of Legislative Assembly Ministers via colleagues in the Legislative Council mean that persons preparing answers, in addition to often making interpretations as to the intent of the question (particularly those that may be opened ended or ambiguous) in very short timeframes, have little if any scope to seek clarification from the questioner relating to the scope of a question, or to provide detailed information to the Minister providing the answer so that he or she is fully aware of any ambiguity or other issue that bears on the answer. The task of the person preparing answers is to answer as accurately and as quickly as is possible in the circumstances.

That does not specifically deal with that sort of moral consideration; it is, again, more about the accuracy of the answers, but it is a timely reminder that accuracy is absolutely imperative.

I would like to briefly comment on the second component of Mr Home's report to the committee in which he states —

In conclusion I assure the Committee that I did not consciously deny the Member, and thereby the Council, any information that I thought was being sought. The information that I agreed to exclude from the answer to Question C192 was highly personal, at a time when Mr Buswell's mental health was still tenuous, and was not germane to the questions, allegations and insinuations emerging in the highly charged political environment of the time. I took Ms Turnseck's request to exclude the information about discussions with Mr Buswell's family from the answer to be solely out of concern for her former Minister and respect for the privacy of his immediate family, and still believe this to be the case.

I acknowledge and accept the comment from Mr Home that his response was purely and absolutely made out of the welfare of Mr Buswell, as opposed to necessarily trying to deceive the house; and similarly for Ms Turnseck, who stated in part —

I very much regret that I gave an unhelpful answer to a question when examined at the CCC. This is my answer at the top of page 83. The CCC concluded I had deliberately misled the Council because of this answer. I think that this is most unfair. That answer should be read with the evidence that immediately followed it where I made the point that I did not think the question was relevant to him in the context of my understanding of what was being asked. I hope that members of this committee can accept that being called before private examinations of the CCC is a most confronting and stressful experience. I found it traumatic. I wish that I had expressed my evidence about this matter more articulately than I did. When I look back at this terrible experience, I accept that I should have advised Stephen Home I had spoken with Mr Gibbons, as I had advised him and others that I had spoken with members of Mr Buswell's family. Even if I had done this, I would still not have wanted Mr Gibbons or members of Mr Buswell's family mentioned in the answer. They were family or, in Mr Gibbon's case, as close as family. Upon reflection, I accept that I should have provided an answer something along the lines of: no, other than with members of Mr Buswell's family and a close personal friend. Or better still: not with anyone in the Premier's office, with any member of Parliament or anyone in Liberal Party headquarters. I apologise that the answer provided was literally incorrect.

That pretty much captures exactly what the Leader of the Opposition stated in her comments to the house today: there are ways in which a question can be answered that are not inaccurate and that capture the integrity of the answer. I think that is what happened here.

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I know Mr Home and Ms Turnseck and I respect them professionally and personally. I am extremely confident that they did not act in order to deceive the Legislative Council and that they acted in the genuine interests of Mr Buswell's welfare. Mindful that the information that was not included in the original response was not technically what was required, I feel that the omission was of a personal nature and that they were giving consideration to Mr Buswell's welfare. I sympathise with Mr Home and Ms Turnseck. I feel they were genuinely acting out of personal altruism for Mr Buswell and not to mislead the Legislative Council. I am in no doubt that, in retrospect, they would have answered the question differently. Having said that, for the reasons mentioned earlier in my comments—that is, the absolute imperative to have accurate answers to questions—the government will support recommendations 1 to 4.

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [3.09 pm]: I rise to comment on recommendation 5 of the committee's report. The Leader of the House has already spoken about the findings of contempt against the individuals involved; I simply want to raise and comment on the subject of the Corruption and Crime Commission's finding of breach of parliamentary privilege. Hon Sue Ellery, whose questions initiated this particular inquiry, had been concerned that there was contempt of Parliament and a breach of its privileges as a result of the answers given to the question without notice by the two individuals who have been identified and who were then public sector officers. The Corruption and Crime Commission, in its report "Report on the Investigation of Alleged Public Sector Misconduct in Relation to an Incident Involving the Hon. Troy Buswell that Occurred on 23 February 2014", found the answer to be deliberately false and misleading. Some comment has been made about the explanations given by Mr Home and Ms Turnseck about the manner in which that answer was crafted. I will not say any more about that.

However, that raises a question about the conduct of the Corruption and Crime Commission in utilising, in its investigation that preceded the forty-fourth report, the questions asked in Parliament and the draft answers to those questions, the email exchanges between the officers tasked with preparing the answers, and the answers that were ultimately given to question without notice C192. In relation to those two matters, the committee found in its forty-fourth report that the actions of the two public sector officers in preparing the answer to question without notice C192 constituted a substantial interference with the proceedings of the Legislative Council. It found also that the Corruption and Crime Commission, in obtaining the draft answers and email exchanges between the public officers in preparing the answers to the parliamentary questions, and in using that to form an opinion of misconduct by the relevant public sectors officers, had impeached the proceedings of Parliament, contrary to the immunity provided by article 9 of the Bill of Rights 1688 (UK), and that, therefore, constituted a breach of parliamentary privilege by the Corruption and Crime Commission. The committee found also that but for that breach of privilege by the Corruption and Crime Commission, the possible contempt by the public sector officers would not have come to light by investigation, and that the breach did not substantially interfere with the proceedings of the Legislative Council. Indeed, quite ironically let us say, had it not been for the Corruption and Crime Commission's breach of parliamentary privilege and investigation into the matter, it may well not have come to the notice of this place that a contempt of Parliament had been committed. That raises an interesting point about how these matters should be dealt with in the future.

As the committee correctly notes in its report, parliamentary privilege is the expression given to the rights and immunities that the two houses of Parliament, their members and officers possess, and which enable members to carry out their parliamentary functions. The two essential elements that comprise parliamentary privilege are freedom of speech and exclusive cognisance. Parliamentary privilege is enforceable by Parliament itself through its power to punish. It derives from article 9 of the Bill of Rights 1688 (UK), which remains an important part of the law of Western Australia. In short, article 9 provides that the freedom of speech in debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside of Parliament. I will not go into the legal chain of circumstance that incorporates article 9 as part of our parliamentary system and parliamentary privilege, suffice to say that the committee found that the Corruption and Crime Commission was a place outside of Parliament and that the question without notice, the draft answers to the question and the emails exchanged between the persons involved in formulating the answer were proceedings of Parliament for the purpose of article 9 of the Bill of Rights. It was for that reason that the committee found that the Corruption and Crime Commission's use of those materials for the purpose of investigating whether any public sector officer had committed misconduct was a breach of parliamentary privilege.

The government accepts the recommendation of the committee about the development of a memorandum of understanding between the Corruption and Crime Commission and the houses of Parliament. It is important to note, and the committee's report makes it clear, that the Corruption and Crime Commission did not wilfully transgress parliamentary privilege. The Corruption and Crime Commission was investigating a matter of public sector misconduct that was well within its terms of reference and, indeed, its function. As I have mentioned, it also revealed, ironically, the breach of privilege and the contempt of Parliament that had been occasioned by the

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actions of the two officers. It is difficult to imagine how Parliament could have explored that short of setting up a committee to look into that matter and using its powers of compulsion. However, that is plainly not the most efficient way of going about it. Parliament has limitations on the manner in which it can investigate matters. Although Parliament is a collegiate body that speaks with one voice on any vote, it is not like a committee. Therefore, that is not the best way of fulfilling an investigative function. However, be that as it may, the report of the committee identifies that the Corruption and Crime Commission played in this case, and in the future can play, a useful role in identifying not only misconduct under its own act but also breaches of parliamentary privilege, particularly in circumstances in which Parliament may not be able to investigate alleged breaches as effectively as a body such as the Corruption and Crime Commission. It is necessary, therefore, that a cooperative approach be taken by the Corruption and Crime Commission and the houses of Parliament so that an investigation of a matter that may stray into areas of parliamentary privilege is dealt with appropriately and in a manner that respects the important prerogatives of Parliament but does not compromise any investigation into misconduct that ought to be inquired into and exposed.

I share the view of the committee that the relationship between the houses of Parliament and the Corruption and Crime Commission would benefit from the development of a memorandum of understanding, as contemplated in committee recommendation 5. I understand from discussions I have had with the Corruption and Crime Commissioner that he accepts that a memorandum of understanding would be beneficial to both the Corruption and Crime Commission and Parliament, and that he supports the development of such a document. It seems to me that there may need to be a broader discussion about the content of such a memorandum of understanding, and that the responsibility of the Corruption and Crime Commission under its remit to explore, investigate and uncover misconduct, and the undoubted desire of Parliament to achieve a similar end when it infringes on the privileges and processes of Parliament, may need to be explored further, notwithstanding the relatively limited scope of that particular recommendation. The government accepts recommendation 5 of the committee unreservedly. However, to my mind there is scope for some broader discussion about these issues in order to achieve a level of cooperation if necessary. Of course, facilities are available to the Corruption and Crime Commission that may not be available to Parliament itself in investigating these matters. Therefore, it would be fruitful to have such a discussion between Parliament and the Corruption and Crime Commissioner.

HON NICK GOIRAN (South Metropolitan — Parliamentary Secretary) [3.17 pm]: I rise to speak to the forty-fourth report of the Standing Committee on Procedure and Privileges of the Legislative Council. This is both a serious and unfortunate matter, and I will endeavour at this time to make all of my remarks about the consideration of recommendation 1 of the committee.

The reason I say this is a serious matter is that one of the privileges of this house is that we have exclusive jurisdiction to deal with our own complaints. This is not a right that is given to every individual, agency or body in Western Australia. The Legislative Council of this Parliament has the exclusive jurisdiction to deal with complaints about matters affecting this chamber and the proceedings of Parliament. That means that if such a complaint is brought forward, it needs to be dealt with and treated with the due respect, seriousness and gravity that it deserves. In the event that this house is unwilling or unable to do that, it will result in an increasing cry from the public that an external agency or body be established to handle complaints about matters that arise in the Legislative Council. That is not something that I consider would be an appropriate or progressive move, and it is for that reason that I was privileged to serve on the Standing Committee on Procedure and Privileges as we considered this serious matter.

Being a serious matter, in order for the inquiry to be productive, meaningful and authentic, it was absolutely fundamental that it be handled on a nonpartisan basis and, in effect, I think that was at the heart of what Hon Sue Ellery spoke about earlier when she referred to her appreciation for how the inquiry was undertaken. I might add that I was somewhat disappointed last week to hear some remarks from other places that seemed to allude to the suggestion that the government had the numbers on this committee and that that somehow had a bearing on the validity of the inquiry, the findings and the recommendations. Certainly, my experience on the committee has been that the representation of a member of the party that they represent has absolutely nothing to do with matters in the committee, and nor should that ever be the case. As I said, the very day that the Standing Committee on Procedure and Privileges becomes a partisan product or a partisan instrument of this place will probably see the end of the committee, and it will certainly increase the cries for Parliament to give up its exclusive jurisdiction in this area.

This is a most serious matter. I know that committee members always recommend that their committee reports be read by other members of the Council. I have not typically said that too often, but on this occasion I recommend that members read the entirety of the report if they have not already had the opportunity to do so. I might add that I think that it should be compulsory training and compulsory reading for any staff member in a minister's office so that they understand the significance of the answers prepared for members in this place.

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The reason that I say that it is an unfortunate matter is in part explained by the question and answer that is at the heart of this inquiry, which can be found on pages 7 and 8 in the forty-fourth report. The question without notice is numbered 176 and, as members would be aware, it was asked by the Leader of the Opposition of the Leader of the House representing the Premier. Of course, members will be aware that we have a procedure in this place that, by way of convention, enables members asking questions to give some notice; even though it is done under the process of questions without notice, some notice is given. That convention was established because by giving some notice, members asking a question can reasonably expect a half-decent answer and, above all, an accurate response. That, of course, is quite different from somebody asking a question entirely without notice that might require some investigation and research. If a member really wants an answer, they might give the minister some notice. It is a useful convention that has developed in this place to provide some notice. As I understand it, that is exactly what Hon Sue Ellery did on this occasion. The first part of the two-part question as outlined on page 7 of the report reads —

Has the Premier or anyone from his office asked the former Treasurer's chief of staff, Ms Rachael Turnseck, whether she discussed the events in the days leading up to the former Treasurer taking personal leave with anyone other than the Premier, his chief of staff and Ms Narelle Cant; and, if not, why not?

The answer given to that first part of the question was —

No. The concern of the Premier and his office has been the welfare of the former Treasurer.

It is important for members to understand that the answer to the question was no, there had not been a conversation with Rachael Turnseck. The second part of the question as outlined in the report reads —

Has Ms Turnseck discussed the events in the days leading up to the former Treasurer taking personal leave with anyone other than the Premier, his chief of staff and Ms Narelle Cant; and, if so, with whom and when?

Of course, the regrettable answer that we now know was provided at the time was —

Prior to the former Treasurer's resignation, no.

This is a most unfortunate matter because had the answer to that question been dealt with in a more appropriate fashion, there would have been no need for this inquiry and we would not be having this debate right now. What I mean by that, Mr President, is that plainly the answer to question (2), in my view, ought to have been “not applicable”. If the answer to question (1) was no, we have not had a conversation with Ms Rachael Turnseck, then the answer to question (2) would have been “not applicable”. This, of course, would not have been an unusual answer to provide, because I notice that on page 7 of the report, immediately above question and answer 176, is question and answer 162, which was also asked by Hon Sue Ellery of the Leader of the House representing the Premier. That question as outlined in the report reads as follows —

(1) *Did anyone from the Premier's or Treasurer's office contact Ben Morton or anyone else in Liberal Party headquarters about the events in the days leading up to the Treasurer commencing personal leave in February this year?*

The response was —

(1) *No; however, Mr Morton was advised in person by the Premier's chief of staff, Brian Pontifex, on 28 February of the Treasurer's ongoing absence. Mr Pontifex also advised Mr Morton by telephone on 9 March of the likelihood that the Premier would be making a statement the following day in response to media reports. On 10 March he telephoned Mr Morton to confirm that the Premier would be making a statement.*

The important thing is that the answer to the first question was no, nobody had had a conversation with Mr Morton. I move now to part (2) of that question, which as outlined in the report reads —

If so, when was contact made, who made contact, with whom and what was discussed?

The answer was “not applicable”. I say that this is a most unfortunate matter because had the approach that was taken to question and answer 162 been taken to question and answer 176, the response that would have been read out by the Leader of the House to the Leader of the Opposition —

The PRESIDENT: The question is that the motion be agreed to. Hon Nick Goiran.

Hon NICK GOIRAN: Thank you, Mr President.

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Had the approach that was taken to question and answer 162 been taken to question and answer 176, the answer that would have been provided to part (2) of question 176 would have been “not applicable”, and that would have been the end of the matter. By all means, if the questioner was dissatisfied with the answer, they might well ask more questions on another day with a little bit of notice, or even put a question on notice and so on and so forth. That is quite within the remit of the questioner. But it is unfortunate that that approach was not replicated in this instance, because it would have made a lot more sense and would have avoided this entire episode, which, no doubt, has been the most stressful and unfortunate affair for numerous individuals.

It is easy for me to stand and say that it is an unfortunate matter and that a question and answer should have been given in a different way. I have not had the experience of having to rush around and prepare an answer to a question in Parliament in the way that the individuals involved in this particular matter have had to do no doubt on numerous occasions. I can well imagine—it does not take a great deal of imagination to appreciate this—that on the particular day on which these questions were asked and the answers prepared, it would have been a highly charged, highly stressful situation, not merely because, clearly, multiple questions were being asked on that day, but also because a lot of other matters would have been going on at that particular time in both houses, and other matters in the public domain. To be rushing around and preparing an answer in that limited time is no doubt a difficult thing. I acknowledge that that would inevitably be the case. However, despite the fact that I acknowledge that, it cannot justify the set of circumstances that arose and are outlined in this report. That is why I found myself agreeing with no hesitation with the findings and recommendations in this report. It might assist members if I briefly take members through the relevant findings. The first finding, which I concur with, is —

That during a telephone conversation that occurred between 12.14pm and 12.47pm on 12 March 2014 Ms Rachael Turnsek told Mr Stephen Home that she had discussed the events in the days leading up to the former Treasurer taking personal leave with members of Mr Buswell’s family.

The reasons that the committee came to that conclusion and its findings are outlined in the report and it is not my intention this afternoon to go over those particular reasons. But the point is that the committee was left in no doubt that a telephone conversation took place that day. Again, it does not require a lot of imagination for members to imagine that that would have been the case as people rushed around preparing an answer to a question. As members can see here, the time that has been suggested is between 12.14 pm and 12.47 pm. That is a perfectly plausible and understandable time within which a telephone conversation would have taken place and indeed the committee acknowledged in its report the evidence of Mr Home, who said that such a conversation took place. We can well understand that a conversation like that would have taken place.

If one member of staff advises another member of staff that yes, they had this conversation and that is at the very heart of the answer that will be provided to Parliament, that cannot not be disclosed. The honourable Leader of the House was left in the unenviable position of, if you like, regurgitating an answer that had been provided to him and about which he had no knowledge whatsoever. The answer to the question that was being asked could only possibly have been known by Ms Turnsek, so the Leader of the House is relying on any of the staff who are preparing this answer—and, of course, Ms Turnsek herself—to provide him, through the Premier, the correct information. If that does not happen, the Leader of the House is left in a terrible situation in which he has to read in an answer. As he indicated in his remarks earlier this afternoon, we do not ever want to get to a situation in which he, or any other ministers or parliamentary secretaries, start to question the integrity of the answers that we are required to read in. It is a most serious matter even though, as I said earlier, we can quite understand the highly charged stressful situation that everyone was involved in. However, if one staff member tells another that there is some information that is pertinent to an answer, it cannot not be revealed. It can be answered in a different way, as I indicated earlier, but by that stage obviously someone had had a conversation with Ms Turnsek.

Finding 2 is on page 37 of the report, and the committee found —

That Mr Stephen Home consciously and deliberately amended the draft answer to Legislative Council Question without Notice C 192 to delete the reference to the former Treasurer’s family at the request of Ms Rachael Turnsek.

It is unfortunate that the answer provided was not different. It could have been different. It could have entirely avoided this finding. However, the reality is that the facts were clear that there was a conscious and deliberate changing of a draft answer that had been provided, which had included a reference to the former Treasurer’s family, to the ultimate answer, which excluded them. That obviously is unsatisfactory. It cannot be repeated, but again I would hasten to add that certainly my judgement was that there was no malicious intent with that amendment to the draft answer. I think it was conscious. I agree with the committee that it was conscious and deliberate, but I do not think it was in any way malicious. Nevertheless, we simply cannot consciously and deliberately provide inaccurate information to Parliament.

On page 39 is finding 3, in which the committee found —

That Mr Stephen Home knew that by amending the draft answer to Legislative Council Question without Notice C 192 to delete the reference to the former Treasurer's family the answer provided to the Legislative Council would be incomplete and misleading.

That simply follows from the previous finding. If someone has been provided information that certain people have been spoken to, included that in a draft answer and has been requested to take that information out and they choose to then take that out and provide that to the Leader of the House, they know that what they are providing to the Legislative Council is an incomplete and misleading answer.

Finding 4 is also found on page 39, and there the committee found —

That the deletion by Mr Stephen Home of the reference to the former Treasurer's family in the answer he drafted to Legislative Council Question without Notice C 192 resulted in the answer provided to the Legislative Council being incomplete and misleading.

As I said, that simply flows on from finding 3.

The last finding relevant to Mr Home is that the committee found —

That Mr Stephen Home's actions in relation to Legislative Council Question without Notice C 192 constituted a substantial interference with a proceeding of the Legislative Council.

That is the case. It is a substantial interference with the proceeding of this house if a question is asked and the information that is provided is purposely inaccurate. That is a substantial interference. When I ask a question from time to time in this place, I rely on and expect that the answer that is provided to me is correct.

The PRESIDENT: The question is that the motion be agreed to.

Hon NICK GOIRAN: I have asked many questions in this place from time to time, both questions without notice of which some notice has been given and questions provided on notice. Some questions have gone to very sensitive matters. One that members will be aware of and that I have pursued for quite some time is with respect to an incredibly sensitive matter of babies being born alive after an abortion procedure. I struggle to think of something that might be more sensitive to ask about. When I have been provided answers, I rely on the fact that those answers are correct and I assume that somebody does not have some information that they are purposely not providing. The answer that I have been provided over the years is that 20 babies were left to die in that situation. I assume that that answer is correct and that it is 20 and it is not 60 or some other number that has not been provided. That goes to the very heart of the integrity of this place. If we cannot ask questions and rely on the answer to be correct, it really makes a mockery of the process of question time in this place where indeed we have improved it by way of convention to ensure that there is appropriate time for research to be done to enhance the accuracy of the answer. I hasten to add that at the end of the day, we are dealing with human beings here; we are not dealing with robots and so mistakes can be made. I think it was Hon Sue Ellery who mentioned judgement calls—that is right. We are dealing with human beings who will make judgement calls and sometimes they get them wrong. If they were a robot perhaps they would not get them wrong, but that is the nature of our system. We have to show some compassion when people make mistakes. Equally, it is a two-way street; those who have the incredible responsibility of providing answers to this place need to be cognisant of the importance of those answers. That is why I say that it should be compulsory reading and training for any staff in ministerial offices.

I will quickly turn to the findings and recommendations with regard to Ms Rachael Turnseck. Although we are not currently debating those recommendations, my understanding is that the intention is to raise all of our remarks now with respect to the first recommendation and allow the rest to flow. In essence, I do not wish to repeat anything that I have already said about Mr Home's circumstances. In the main, the same circumstances apply to Ms Turnseck, with the exception of one particular matter that I will speak about now. It is the case that Ms Turnseck was intrinsically involved in the preparation of this answer. As I indicated earlier, only she could have known the answer that was going to be provided in Parliament. Some might question why it was necessary to ask this question in the first place and what it would materially provide, but that is not the issue here. The question was asked and so an answer must be given. However, there is one important difference between these two individuals that, if you like, elevates the gravity between Mr Home and Ms Turnseck. As is found at page 45 of the committee's report, a set of circumstances was uncovered by the Corruption and Crime Commission to do with the then electorate officer of the former Treasurer. The summary is that a conversation took place with this electorate officer that was never revealed to Mr Home and therefore never formed part of his preparation of the answer that was ultimately given by the Leader of the House. That is not the fault of Mr Home, just as it is not the fault of the Premier, the Leader of the House or anybody else. There is only one person who knew that information and kept it secret and it was uncovered only by the Corruption and Crime Commission. That is what

elevates the gravity of that particular conduct and why a bit more time has been taken by the committee in making its findings and recommendations about that additional matter.

Again, it is unfortunate. I recognise that an apology was provided in the form of a submission by Ms Turnseck. I acknowledge it and, for what it is worth from my perspective, appreciate it. Of course, it does not change the fact that it occurred and it needs to be recognised with due gravity by the Legislative Council.

The relevant findings about Ms Turnseck conclude on page 51 with the following —

Finding 12: The Committee finds:

That Ms Rachael Turnseck’s actions in relation to Question without Notice C 192 constituted a substantial interference with a proceeding of the Legislative Council.

That was for the same reasons I outlined with regard to Mr Home.

As Hon Adele Farina outlined, the committee was also asked to look into whether there were any issues with respect to other persons connected to question without notice 176. This is found in chapter 7 of the report. I want to emphasise this very brief chapter, which is only two pages. The committee draws the attention of all members to finding 13 —

That there is no evidence to support a finding that any other natural person has committed a contempt or breach of privilege in relation to the answer to Legislative Council Question without Notice No. 176 (C 192) given in the Legislative Council on 12 March 2014.

I want to briefly comment on the contribution made by Hon Sue Ellery. I note during her contribution that she listed a number of names of individuals. For what it is worth, honourable member, I do not know why it was necessary to do that.

Hon Sue Ellery: I was going to refer to the letters. I referred to the letters, and the one from the Premier.

Hon NICK GOIRAN: My view is it was not necessary to highlight the names of individuals who the committee expressly found no evidence to support a finding against. I take the opportunity to emphasise that any of the people named were only inquired into by the Standing Committee on Procedure and Privileges because, as members will see in the report, they were copied into a relevant email towards the conclusion of the collaboration process. It was necessary for the committee to ascertain whether those individuals had had any involvement in the preparation of the answer. As members will see in the appendices to the report, if I am not mistaken, answers were provided by all of those individuals that make it quite clear that they had no involvement in this matter; therefore, the committee has found that there was no evidence to support a finding against any other natural person.

Finding 13 is expressly framed in such a way to refer to no other natural person because it then leaves open the opportunity for any unnatural person, which, in this instance, is relevant with regard to the Corruption and Crime Commission. That is in chapter 8 of the report. It has already been outlined well by Hon Adele Farina so I do not propose to re-examine or rehash those issues. In this instance it was fortuitous and helpful that the committee comprised Hon Adele Farina and me in that we also both serve on the Joint Standing Committee on the Corruption and Crime Commission. We are the two members of the Legislative Council appointed to serve on that committee. I think it was helpful because one would not want a situation in which two committees of Parliament —

The PRESIDENT: The question is that the motion be agreed to.

Hon NICK GOIRAN: We would not want a situation in which two committees of Parliament might come to a different conclusion about the appropriateness of the actions of the Corruption and Crime Commission. I was grateful to serve on the committee with Hon Adele Farina with respect to this matter, and the other members, so there could be some general consensus about the conduct of the CCC. I have to say that at times it was perplexing to understand and appreciate the Corruption and Crime Commission’s submission. I have to confess I am still perplexed by its submission and my hope is that with the benefit of the entire report, the commission might reconsider what it said in its submission and work collaboratively with the Legislative Council, but hopefully the entire Parliament, to prepare a memorandum of understanding to avoid yet another unfortunate episode. I say “unfortunate” because, as has been outlined in the report, the committee and, I think, the Legislative Council ought to be grateful that the Corruption and Crime Commission uncovered this matter. We disagree with the Corruption and Crime Commission in that, firstly, it chose to, in effect, make an opinion of misconduct based upon matters that were in the exclusive jurisdiction of the Parliament, and that ought not to have happened. Secondly, it chose to prepare a report, which it transmitted to the Premier of Western Australia. Although a power and an option are available to the Corruption and Crime Commission to table reports directly with a relevant minister, in this instance when it was a matter that was plainly in the interest of the Legislative

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Council, it cannot be reasonably said that it was appropriate for the Corruption and Crime Commission to provide a report only to a member of the other place. Thankfully, in this instance the Premier of Western Australia did table that report. It became a public document and it enabled the Standing Committee on Procedure and Privileges and the Legislative Council to take the action that we have taken, but it is unfortunate that the Corruption and Crime Commission took the course of action that it did.

Having said that, I recognise that issues of parliamentary privilege do not arise that often, particularly outside this place. My experience in the legal industry has been that matters of parliamentary privilege are generally not well understood, and because they come up so infrequently, at one level it is understandable how this mistake might have occurred. Nevertheless, it was appropriate for the procedure and privileges committee to inquire specifically into that issue, make the findings that it has made and make the recommendations that it did. Indeed, I remember, and, Mr President, you may remember as well, the matter, I think in the last Parliament, when a summons was attempted to be served on a member of Parliament in the precinct of the Parliament. That attempt to serve was undertaken, as I recall, by a law firm, which had instructed a process server, or someone from the firm, to try to serve a summons, and, plainly, that was inappropriate. I cannot recall exactly how that matter ended and whether there was a report of the procedure and privileges committee or maybe simply a ruling by the President, but it matters not. The point is that it was plainly inappropriate, but it once again demonstrated that issues of parliamentary privilege are not well understood generally in Western Australia. Maybe that is the case in other jurisdictions as well. For that reason, I think that this recommendation that the Corruption and Crime Commission work collaboratively with the Parliament to prepare a memorandum of understanding will be helpful. It will hopefully avoid a situation in which this might occur in the future. It is not as though the Corruption and Crime Commission is the only investigative body in Western Australia. We have other investigative agencies, and one would hope that they would not also fall into this trap. I do not know whether there is a necessity for a memorandum of understanding to be developed with other investigative bodies, but it is something that the procedure and privileges committee might potentially want to consider at a later stage.

With those remarks, I very much encourage members to take this report and its findings and recommendations with the seriousness that is warranted. I re-emphasise that I think it is a most unfortunate episode for all involved. I am grateful that the Legislative Council now has an accurate answer to Hon Sue Ellery's original question. I am not sure that we are any better off as a result of the accurate answer than we would have been with the inaccurate one, but it matters not. The point is that the member was entitled to have an accurate answer to her question and it was not provided. It is an unfortunate episode and I commend to the house the recommendations of the report by the Standing Committee on Procedure and Privileges.

HON LIZ BEHJAT (North Metropolitan) [3.55 pm]: I do not want to delay this debate any further than we need to; however, I feel compelled to put some comments on the record about this Standing Committee on Procedure and Privileges report, "A Matter of Privilege Raised by Hon Sue Ellery MLC". I think this is a very important report that the procedure and privileges committee has brought down and the *Hansard* attached to this discussion today will be looked at by people in the future. I completely understand and agree with the fact that the procedure and privileges committee did what it did about this matter and has reached its findings in an objective, non-partisan and dispassionate manner. I fully understand that, and members know from my previous experience in the house that I hold matters such as the sovereignty of this house and issues for us to be of paramount importance. However, at the end of the day, as Hon Nick Goiran referred to in his contribution, as have other members, we are dealing with human beings and we cannot leave that to one side. If the former Treasurer had chosen a different course of action on 22 February 2014 and had not had such a flagrant disregard for the laws of this land and driven the car when he did on that night, none of this would have happened. There is no moving away from that. He is the one who is at the base of this report.

It seems that the people wearing the problems related to that are Ms Rachael Turnseck and Mr Stephen Home. I do not know Mr Stephen Home; I do not believe I have ever met him. But I have to say that I know Rachael Turnseck. I suppose that is one of the main reasons I am standing here today. I have known Rachael Turnseck for 20 years and I call her a very close friend of mine. She has been a colleague of mine in the past. The issue here is that this is an environment in which people are asked by ministers to do things with a very quick turnaround time on issues that may be quite sensitive. The fact that staffers work for the same people for a long time means that they form relationships with them. There is no doubt about that. Those of us in the house who have been ministers or members of Parliament for a long time have staff who are incredibly loyal. I have been in that position. Prior to becoming a member of this place, I was a staffer for 10 years and I also showed loyalty to the people I worked for. I did not have any conversations with Rachael Turnseck during the time of the CCC inquiry and certainly not during the time that the procedure and privileges committee inquiry was underway, but I certainly did have conversations with her just after the incident involving the former Treasurer and I know exactly how it impacted on her personally. I know the trauma that she went through. I also know that

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the former Treasurer was in a very unfit mental state at that time. In this place we often talk about people's mental state and the need to look after people and be aware of the trauma they go through.

I am not going to say anything about recommendations 1 to 5. I stand beside what the procedure and privileges committee does, but I want people to remember that at the base of this we are dealing with people's lives and with unpleasant things that happened to people. Ms Turnseck has given an apology and if the findings are that she needs to do something further, without even knowing what her actions might be, I am sure she will properly comply with them. At the end of the day, if her only crime was that she was loyal to somebody that she faithfully served for a number of years, then I am very proud she is a friend of mine and that she was a colleague. I want someone to put on the record that in no way was she ever willingly or knowingly trying to do something to hide information from anybody in this place. She just had at heart what she thought were the best interests of someone going through a very traumatic time.

HON ADELE FARINA (South West) [4.00 pm] — in reply: I just want to comment on a comment that I think the Attorney General made. I am glad he is in the chamber so that he can correct me if I misheard. I understood him to express a view about the limitations and effectiveness of a parliamentary committee undertaking an investigative function.

Hon Michael Mischin: I was talking more about Parliament's limitations in being able to conduct an investigation.

Hon ADELE FARINA: Yes, and I appreciate that. He expressed some view about the capacity of a parliamentary committee to undertake an investigative function; is that correct?

Hon Michael Mischin: No, not quite. I cannot recall my precise comment, but it was really to say that there were limitations of Parliament in being able to conduct an investigation short of referring it to a committee, which may be able to do some of that function.

Hon ADELE FARINA: Having served on a number of parliamentary committees that have had an investigative function requirement in terms of a potential breach of parliamentary privilege or contempt, I want to put on the record that the capacity of committees to undertake that investigative function should never be questioned. The committees that I have served on have always undertaken it to a very high level. It is really important that we do not try to undermine the importance of article 9 and that we should not accept in any circumstances any encroachment on the jurisdiction of Parliament. In the circumstances of this incident, a memorandum of understanding between Parliament and the Corruption and Crime Commission is needed because of the very fact that this incident occurred. In the past, when issues have impinged on proceedings of Parliament, the CCC has alerted Parliament to the fact that it had this information before it and the matter was able to be dealt with by Parliament, and I think that is the correct process. I do not think there is any question here of an overlap of jurisdiction. We have very separate jurisdictions and there is no question that the CCC encroached on the jurisdiction of Parliament in this instance. I just wanted to put on the record that it is very important that that MOU proceed and that we protect article 9 to its full extent in that MOU.

The other comment I want to make is that this highlights a point that Hon Nick Goiran made; that is, this situation has highlighted the very poor understanding that people generally have of parliamentary privilege. What has astounded me most in all of this is the fact that ministerial staff have a very poor understanding of parliamentary privilege and all the implications associated with it. It goes back to a matter I raise often in this place; that is, we need to do more in the induction. I have talked about members of Parliament understanding the parameters within which we operate, but clearly that also needs to extend to ministerial staff. Hon Nick Goiran is correct, and I agree with him; in legal circles, the understanding of parliamentary privilege is probably fairly limited because most lawyers do not come into contact with it. The fact that there is limited understanding of it in ministerial offices is of great concern, given the nature of the work they do. This highlights the fact that we need to do more in the induction and training of ministerial staff in this process and it should not be limited to just an MOU.

Having said that, I want to conclude by saying that this was a difficult inquiry and involved some very complicated questions of law. I put on the record my thanks to the Clerk and the staff of the committee who served the committee extraordinarily well, provided excellent advice to the committee throughout the inquiry and helped compile the report before us. It covers all the legal issues in relation to article 9. It really is an important read for all members of Parliament. Again, I thank all the staff who supported the committee through this process.

The PRESIDENT: The question is that the motion be agreed to. I will put the questions independently. The first question is that recommendation 1—that Mr Stephen Home be adjudged guilty of a contempt of the Legislative Council—be agreed to.

Question put and passed.

Recommendation 2 —

HON ADELE FARINA (South West) [4.04 pm] — without notice: Pursuant to recommendation 2, I move —

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That Mr Stephen Home do within seven days unreservedly apologise in writing to the Legislative Council for providing incomplete and misleading information in answer to question without notice 176 (C192) which rendered part (2) of the answer false in a material particular.

Question put and passed.

Recommendation 3 —

HON ADELE FARINA (South West) [4.05 pm] — without notice: Pursuant to recommendation 3, I move —

That Ms Rachael Turnseck be adjudged guilty of a contempt of the Legislative Council.

Question put and passed.

Recommendation 4 —

HON ADELE FARINA (South West) [4.06 pm] — without notice: Pursuant to motion 4, I move —

That Ms Rachael Turnseck do within seven days unreservedly apologise in writing to the Legislative Council for providing incomplete and misleading information in answer to question without notice 176 (C192) which rendered part (2) of the answer false in a material particular.

HON NICK GOIRAN (South Metropolitan — Parliamentary Secretary) [4.06 pm]: Just briefly, I want to make the remark for the benefit of those who are observing the proceedings so that there is no misunderstanding that if the Legislative Council is to agree to this recommendation, as it has with regard to Mr Stephen Home, the seven days that is referred to begins only when an order of the Legislative Council is served on the individual. Mr President, I would be concerned if members of the public were confused in thinking that the seven days might run from today and you started fielding queries in seven days' time to find out whether there had been a written apology. The seven days does not start from today.

The PRESIDENT: I think the house notes that.

Question put and passed.

Recommendation 5 —

HON ADELE FARINA (South West) [4.07 pm] — without notice: Pursuant to recommendation 5, I move —

That a memorandum of understanding be developed between the houses of the Parliament of Western Australia and the Corruption and Crime Commission to ensure that —

- (a) in forming an opinion of misconduct against a public officer the CCC does not breach the privileges of the Parliament;
- (b) conduct of public officers which constitutes a contempt or breach of privilege of the houses of Parliament is dealt with by the relevant house of Parliament under the powers provided to the houses by the Parliamentary Privileges Act 1891; and
- (c) the CCC, where practicable, provide evidence in its custody, control or power to assist a house of Parliament to investigate and determine offences of contempt or breach of privilege.

Question put and passed.