

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES — FIFTY-SIXTH REPORT —
LEGAL ADVICE

992. Hon MICHAEL MISCHIN to the Leader of the House representing the Premier:

I refer to the Leader of the House's comments on 5 September 2019 in the course of debate on the fifty-sixth report of the Legislative Council's Standing Committee on Procedure and Privileges.

- (1) Is it the view of the Premier and his government that the standing committee should produce and table the legal advice it received supporting the recommendations made in its report?
- (2) If yes to (1), will the Premier table the legal advice that the government received in support of the government's position as expressed by the Leader of the House; and, if not, why not?
- (3) What is the Premier's rationale for Parliament disclosing its legal advice while the government keeps secret the advice it has received?

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

- (1) The member will be aware that in its fifty-fifth report, the Standing Committee on Procedure and Privileges recommended that this house make a number of orders, including orders that purported to prevent the director general of the Department of the Premier and Cabinet from producing documents to the Corruption and Crime Commission, or any other investigative agency, in response to any compulsory process. The house proceeded to make that order, despite the Leader of the House specifically pointing out that the order was beyond the power of the committee and beyond the power of the house and despite the Leader of the House having questioned why the legal advice had been summarised and not annexed as per what the Leader of the House understood to be the usual practice.

In its fifty-sixth report, the standing committee conceded that order 4, which was made in response to the recommendations in the fifty-fifth report, was unlawful. That concession was based on advice received from Mr Chris Zelestis, QC. In light of the standing committee making recommendations that were unlawful, the Leader of the House expressed grave concerns as to the lawfulness of the new recommendations. In those circumstances, it was entirely appropriate for the Leader of the House to ask for the legal advice upon which it was relying to be tabled, more so when the Legislative Council was being asked by the standing committee to support a recommendation to commence proceedings, and therefore expend taxpayers' money, against unnamed parties, seeking unnamed relief, at an unnamed cost and all in circumstances in which the prospects of success of any such litigation was unknown.

- (2) No. The government, through the Leader of the House, had not recommended that the Legislative Council adopt an unlawful recommendation—that is, recommendation/order 2.

Hon Michael Mischin interjected.

Hon SUE ELLERY: Madam President, I do not have the capacity to respond to interjections today. I am sorry about that. The answer continues —

Indeed, the government in the Legislative Council voted against it. The government was not advancing recommendations that were completely unprecedented in nature by asking the Legislative Council to vote for a recommendation, or series of recommendations, that had the potential to be unlawful.

- (3) The rationale is plain and is set out in part (2).