



THIRTY-SEVENTH PARLIAMENT

REPORT 18

**STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES**

**REFERRAL OF LETTERS BY RESOLUTION OF THE
HOUSE ON 20 FEBRUARY 2008 REGARDING THE
REPORT OF THE SELECT COMMITTEE OF
PRIVILEGE ON A MATTER ARISING IN THE
STANDING COMMITTEE ON ESTIMATES AND
FINANCIAL OPERATIONS -**

HON JULIAN GRILL

Presented by Hon Nick Griffiths MLC (Chairman)

April 2008

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed:

24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“6. Procedure and Privileges Committee

- 6.1 A *Procedure and Privileges Committee* is established.
- 6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (*all ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.
- 6.3 With any necessary modifications, SO 326A applies to a co-opted member.
- 6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees.
- 6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry:

Hon Nick Griffiths MLC (Chairman)	Hon Sheila Mills MLC
Hon George Cash MLC (Deputy Chairman)	Hon Simon O’Brien MLC
Hon Graham Giffard MLC	Hon Ken Travers MLC
Hon Ray Halligan MLC	Hon Giz Watson MLC (co-opt Member)

Staff as at the time of this inquiry:

Malcolm Peacock, Clerk of the Legislative Council	Donald Allison, Clerk Assistant (House)
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REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO

REFERRAL OF LETTERS BY RESOLUTION OF THE HOUSE ON 20 FEBRUARY 2008 REGARDING THE REPORT OF THE SELECT COMMITTEE OF PRIVILEGE ON A MATTER ARISING IN THE STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS - HON JULIAN GRILL

1 REFERENCE AND PROCEDURE

1.1 On 20 February 2008, on the motion of the Leader of the House, the following matters were referred by the Legislative Council to the Procedure and Privileges Committee (**Committee**):

- (1) The letters tabled in the House on 19 February 2008 by the President be referred to the Standing Committee on Procedure and Privileges, for the committee to consider and report to the House on -
 - (a) whether the letters constitute an “unreserved written apology” in accordance with the resolutions of the House on 4 December 2007 and to determine the merit or otherwise of the arguments contained in the purported apologies; and
 - (b) what further action may be taken by the House.
- (2) The Committee have access to documents in the possession of the Clerk relating to the inquiry of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations.

1.2 The Committee only addresses the correspondence forwarded to the President on behalf of Hon Julian Grill for the purposes of this Report. The other letters referred to the Committee in the resolution of 20 February 2008 are dealt with in the Committee’s Reports Nos 16 and 17.

2 BACKGROUND

2.1 The referral arose from the recommendations contained in the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations (**Select Committee**).

2.2 The relevant part of the motion agreed to on 4 December 2007 is as follows:

1. *Recommendations 3, 6, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 contained in the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations be adopted and agreed to.*

- 2.3 Recommendation 20 required Hon Julian Grill to provide an unreserved written apology to the House for the unauthorised disclosure of the Committee's private proceedings to Mr Brian Burke, and that the apology be provided within seven days of the order of the House.
- 2.4 Pursuant to the resolution of the House, two items of relevant correspondence were received from counsel on behalf of Hon Julian Grill, and were referred to the Committee under the resolution of 20 February 2008. These items were -
- (a) letter dated 11 December 2007 from Mr Steven Penglis, Partner, Freehills to the President of the Legislative Council; and
 - (b) letter dated 15 February 2008 from Mr Steven Penglis, Partner, Freehills to the President of the Legislative Council.
- 2.5 These letters were tabled on 19 February 2008. A copy of these letters are appended to this report (see **Appendices 1 and 2**).

Scope of Committee's Inquiry

- 2.6 The resolution of the House of 20 February 2008 did not direct or provide for the Committee to re-examine the merits or otherwise of either the recommendations of the Select Committee, or the consideration and adoption of the recommendations by the House. To this end, the Committee could only consider arguments contained in the purported apologies to the extent that any matters raised were not previously considered by the Select Committee.
- 2.7 In effect, the resolution directed the Committee to consider and report on three discrete matters -
- (a) whether the letters constitute an "unreserved written apology" in accordance with the resolutions of the House on 4 December 2007;
 - (b) to determine the merit or otherwise of the arguments contained in the purported apologies; and
 - (c) what further action may be taken by the House.

3 ISSUES

Consideration of Correspondence Received regarding Hon Julian Grill

- 3.1 The Committee considered the correspondence received from Mr Steven Penglis on behalf of Hon Julian Grill. As neither letter offered an apology in any form (and neither letter was authored by Hon Julian Grill), the correspondence did not constitute an "unreserved written apology" in accordance with the resolutions of the House on 4 December 2007.
- 3.2 Given the correspondence did not constitute an "unreserved written apology", the Committee was not required to consider the merit or otherwise of the arguments contained therein.

3.3 The Committee resolved on 28 February 2008 that Hon Julian Grill be requested to appear before the Committee and give oral evidence to assist members' consideration of what further action may be taken by the House.

3.4 Accordingly, Hon Julian Grill appeared before the Committee in open session on 27 March 2008.

Hearing with Hon Julian Grill - 27 March 2008

3.5 During his evidence hearing on 27 March 2008¹, Hon Julian Grill confirmed that he had not apologised to the House in accordance with the resolutions of 4 December 2007. At the conclusion of the hearing, the Chairman offered Hon Julian Grill another opportunity to provide an unreserved apology. Hon Julian Grill responded "I am afraid I cannot for the reasons I have already indicated"².

Compliance with Resolutions of the House

3.6 The deliberate non-compliance with a resolution of the House by Hon Julian Grill is a serious matter. Such actions must be considered a grave contempt of the House, and warrant further action by the House.

3.7 The Committee is cognisant of the limited range of penalties available to the House to deal with matters of contempt.

4 FINDINGS

4.1 The Committee finds that Hon Julian Grill has not made an "unreserved written apology" in accordance with the resolution of the House on 4 December 2007.

4.2 Given Hon Julian Grill's statements that he has knowingly not complied with the resolution of the House, the Committee further finds that Hon Julian Grill has committed a grave contempt in not complying with the resolutions of the House of 4 December 2007.

¹ A copy of the *Transcript of Evidence* of the Hearing of 27 March 2008 is attached at Appendix 3.

² Hon Julian Grill, *Transcript of Evidence*, 27 March 2008, p7.

5 RECOMMENDATIONS

5.1 The Committee recommends that the House -

- (a) admonish Hon Julian Grill in writing for his grave contempt of the Legislative Council; and
- (b) requests the Presiding Officers to -
 - (i) revoke indefinitely Hon Julian Grill's rights and privileges enjoyed as a former member in relation to Parliament House; and
 - (ii) exclude Hon Julian Grill from the Parliament's grounds and buildings for the duration of the 37th Parliament.

Recommendation 1:

The Committee recommends that the Legislative Council -

- (a) admonish Hon Julian Grill in writing for his grave contempt of the Legislative Council; and**
- (b) requests the Presiding Officers to -**
 - (i) revoke indefinitely Hon Julian Grill's rights and privileges enjoyed as a former member in relation to Parliament House; and**
 - (ii) exclude Hon Julian Grill from the Parliament's grounds and buildings for the duration of the 37th Parliament.**

Recommendation 2:

Pursuant to Recommendation 1(a), the Committee recommends the following form for the written admonishment to Hon Julian Grill -

“ The Legislative Council resolved on 4 December 2007 that you provide an unreserved written apology to the House for the unauthorised disclosure of the private proceedings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations to Mr Brian Burke, and that the apology be provided within seven days of the order of the House. You have not complied with this direction of the House.

Your deliberate non-compliance with the direction of the Legislative Council constitutes a grave contempt of the House.

The Legislative Council hereby admonishes you for your grave contempt of the House.

”.



**Hon Nick Griffiths MLC
Chairman**

8 April 2008

APPENDIX 1
LETTER OF 11 DECEMBER 2007 FROM COUNSEL FOR
HON JULIAN GRILL TO THE
PRESIDENT OF THE LEGISLATIVE COUNCIL

APPENDIX 1
LETTER OF 11 DECEMBER 2007 FROM COUNSEL FOR
HON JULIAN GRILL TO THE
PRESIDENT OF THE LEGISLATIVE COUNCIL

11-DEC-2007 06:57 From:FREEHILLS

0892117202
0892117202

To:092227814

P.2/4

Freehills

The Hon. Nick Griffiths MLC
President of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

11 December 2007
Matter B1262191
By fax

Dear Sir

**Select Committee of Privilege on a matter arising in the Standing
Committee on estimates and financial operations**

I refer to my letters to you dated 14 November 2007 and 26 November 2007, and the Clerk of the Legislative Council's letter to Mr Grill dated 5 December 2007.

I note with disappointment that you have not been able to respond to my earlier letters, even to simply acknowledge receipt of the same.

Mr Grill:

- has the upmost respect for the Parliament of Western Australia and its processes;
- has the same respect for you personally and your position;
- does not treat lightly orders made by Parliament;
- will not shield himself behind issues of process, no matter how flawed the process is, if he has done something which warrants or even arguably warrants an apology.

In this respect I note that on 14 August 2007, Mr Grill apologised to the Legislative Assembly notwithstanding being denied natural justice, as he accepted that his conduct warranted an apology. In this regard I note that my views that Mr Grill was denied natural justice in that instance were shared by a Member of the Legislative Assembly in the House, immediately upon the provision of an apology by my client, and by another member of the Legislative Assembly on the ABC's Stateline program on 17 August 2007. The matter was also the subject of comments by the President of the Law Society, the President of the Bar Association of Western Australia and the President of a Council for Civil Liberties.

I also refer to the fact that Mr Grill personally wrote to all Members of Parliament explaining his situation and asking advice on the matter of an apology to the Legislative Council on 20 November 2007.

As set out in my previous letters to you and Mr Grill's letter to all Members, the finding and recommendation with respect to Mr Grill made by the above Committee were seriously flawed, both as to process and substance. As detailed in those letters, the flaws in process were that the finding and recommendation were beyond the Committee's terms of reference and procured in circumstances where Mr Grill was, yet again, denied natural justice. As a matter of substance, the evidence before the Committee plainly did not support the Committee's findings against Mr Grill.

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11-DEC-2007 06:57 From:FREEHILLS

0892117202
0892117202

To:092227814

P.3/4

Freehills

Notwithstanding all of these matters, the Legislative Council adopted the Committee's findings and recommendations with respect to Mr Grill without any debate relating to the matters raised in our letters.

Indeed, the only reference to my letters during the debate on 4 December 2007 was by the Honourable Giz Watson MLC who referred to the fact that I had pointed out that Mr Burke's evidence did not support the Committee's finding and said:

"This is a reasonable point, I believe, and there does not appear to be sufficient evidence to support a finding that Mr Grill disclosed proceedings of the select committee".

Ms Watson was referring to the fact that the words relied upon by the Committee, to establish contempt, namely "that those documents had been requested by the Committee", are nowhere to be found in the transcript and were never stated by Mr Burke.

Notwithstanding those comments, the fact that the Member had "some reservations about supporting this recommendation" and the fact that the Member had "some sympathy for that point of view", the Member nevertheless voted in favour of the relevant motion.

Of course, all of this without Mr Grill having the opportunity of appearing before those who would find him "guilty" of contempt and having an opportunity to state his case.

Whilst we appreciate that the Legislative Council had the more weighty matters of the possible expulsion of two of its Members to debate last week, it appears that Mr Grill's matter has effectively proceeded before the Committee and the House as if he was a non-person without any rights.

There is a stark similarity between this matter and the earlier proceedings before the Legislative Assembly. Both have involved a serious denial of natural justice to Mr Grill. Of course, we are well aware of the fact that, unlike any other institution or person in Australia, various Parliaments in Australia, including the State of Western Australia, are not required to afford natural justice as a result of the application of rules and processes which are clearly in urgent need of reform so as to make them appropriate for a 21st century democracy.

The difference between the present instance and the matter before the Legislative Assembly is that, unlike the position there, the Council's finding that Mr Grill is in contempt of Parliament is entirely without foundation.

In the circumstances:

- I cannot advise Mr Grill to apologise;
- Mr Grill does not believe he has done anything to warrant an apology;
- Mr Grill will not therefore apologise.

We urge the Council to consider the matters raised in this and my previous correspondence when it gives this matter further consideration in light of Mr Grill's refusal to apologise.

In particular, we refer to and repeat the penultimate and ultimate paragraphs of my letter to you dated 26 November 2007 and respectfully:

- request that the Council obtain independent advice or establish a Committee to inquire into the matters raised in my correspondence (as well as all matters raised by other persons or on their behalf); and
- suggest that the time has come for the broader question of the manner in which the issue of Parliamentary privilege is dealt with be thoroughly reviewed by a Committee of Parliament appointed for that purpose with a view to introducing reform, such as has been undertaken in the United Kingdom and Victoria, to ensure that the rights of Australian citizens are better protected before any adverse findings be made against them in the future.

11-DEC-2007 06:57 From: FREEHILLS

0892117202
0892117202

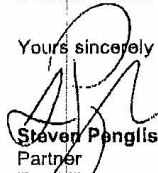
To: 092227814

P. 4/4

Freehills

I also note that Mr Grill and I are willing to meet with you and/or the Committee to discuss a way through this matter? I reiterate that Mr Grill wants to co-operate with the Legislative Council as best he can.

Yours sincerely



Steven Penglis
Partner
Freehills
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steven.penglis@freehills.com

cc. The Hon. Norman Moore MLC
Leader of the Opposition of the Legislative Council
By facsimile: 0226 2976

APPENDIX 2
LETTER OF 15 FEBRUARY 2008 FROM COUNSEL FOR
HON JULIAN GRILL TO THE PRESIDENT OF THE
LEGISLATIVE COUNCIL

APPENDIX 2
LETTER OF 15 FEBRUARY 2008 FROM COUNSEL FOR
HON JULIAN GRILL TO THE
PRESIDENT OF THE LEGISLATIVE COUNCIL

15-FEB-2008 16:44 From: FREEHILLS

0892117202
0892117202

To: 092227814

P. 2/3

Freehills

The Hon Nick Griffiths MLC
Leader of the Legislative Council
Parliament House
PERTH WA 6000

15 February 2008
Matter 81252191
By fax

Dear Sir

Private & Confidential

**Select Committee of Privilege on a matter arising in the Standing
Committee on estimates and financial operations**

I refer to your letter dated 17 January 2008.

As my views do not seem to have carried any weight with the Council, I thought it appropriate to obtain an opinion from Senior Counsel.

In that regard, we briefed Mr Stephen Gageler SC, an eminent Senior Counsel at the New South Wales Bar.

Mr Gageler SC has now provided us with his Preliminary Opinion.

In summary, Mr Gageler, in agreement with our views, has opined as follows:

- (1) Finding 19 and Recommendation 20 are clearly beyond the terms of reference of the Select Committee and therefore *ultra vires* and procured in circumstances where Mr Grill has been denied natural justice;
- (2) while there was evidence before the Select Committee from Mr Burke which justified a finding that Mr Grill gave Mr Burke documents which Mr Grill said he would be giving to the Select Committee, there was no evidence before the Select Committee that Mr Grill advised Mr Burke that those documents had been requested by the Committee. Nor was there any analysis to support the proposition that the documents were confined to documents which had been requested by the Select Committee; and
- (3) Mr Grill was right to disagree with Counsel Assisting the Select Committee on 8 October 2007, in relation to the suggestion put to Mr Grill that the provision of the documents was contrary to a direction of the Chairman of the Select Committee.

Further, in Mr Gageler's view, there is a strong argument that the Legislative Council lacked power to make the order of 4 December 2007 (and similarly would lack power to seek itself to deal with Mr Grill's non-compliance as a contempt of Parliament) given that the power of the Legislative Council to itself punish summarily for contempt is limited to the offences enumerated in ss 8 and 10 of the *Parliamentary Privileges Act 1991 (WA)*. Consequently, the matter may only be dealt with by the Attorney-General (at the direction of the Legislative Council) applying to the Supreme Court. It would then be open for Supreme Court to review whether it was within the power of the Legislative Council to make the order on 4 December 2007.

Please let me know if you would like a copy of Mr Gageler's Opinion.

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15-FEB-2008 16:44 From:FREEHILLS

0892117202
0892117202

To:092227814

P.3/3

Freehills

Finally, I note that Mr Grill and I remain willing to meet with you (or any member(s) of the Council) to discuss this matter.

Yours faithfully



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Copy

The Hon Kim Chance MLC
Leader of the Government in the Legislative
Council

The Hon Ljiljana Ravlich MLC
Deputy Leader of the Government in
the Legislative Council

The Hon Norman Moore MLC
Leader of the Opposition in the Legislative
Council

The Hon Giz Watson MLC
Member of the Legislative Council

APPENDIX 3
TRANSCRIPT OF HEARING OF
HON JULIAN GRILL ON 27 MARCH 2008

APPENDIX 3
TRANSCRIPT OF HEARING OF
MR NOEL CRICHTON-BROWNE ON 27 MARCH 2008

STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES

TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
THURSDAY, 27 MARCH 2008

SESSION TWO

Members

The President (Hon Nick Griffiths) (Chairman)

The Chairman of Committees (Hon George Cash) (Deputy Chairman)

Hon Graham Giffard

Hon Ray Halligan

Hon Simon O'Brien

Hon Sheila Mills

Hon Ken Travers

Hon Giz Watson (Co-opted member)

Hearing commenced at 11.19 am

GRILL, MR JULIAN
Consultant, Julian Grill Consulting Pty Ltd,
sworn and examined:

The CHAIRMAN: Good morning. On behalf of the committee, I would like to welcome you to this hearing. It is proposed that you will be examined. Before the examination begins, I must ask you to take either the oath or the affirmation.

Mr Grill: I will take the oath, thank you, Mr Chairman.

[Witness took the oath.]

The CHAIRMAN: Thank you. For the record, would you please state your name, occupation and the capacity in which you appear before this committee?

Mr Grill: Julian Fletcher Grill. I am a consultant, and I appear here as a witness.

The CHAIRMAN: Have you signed a document entitled “Information for Witnesses”?

Mr Grill: Yes, I have.

The CHAIRMAN: The document seeks to explain your entitlements as a witness. Have you read the document?

Mr Grill: Yes, I have, Mr Chairman.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you, and you will have an opportunity to correct any transcription errors and to clarify any matter in the transcript. I note you have a person present with you. Would you please identify that person to the committee and state why he is here?

Mr Grill: The person on my left is Mr Steven Penglis. He is a partner of Freehills law firm, and he is my counsel.

The CHAIRMAN: Thank you. I take the opportunity to remind everyone of the role of legal counsel in these proceedings. Counsel is not permitted to answer questions or reply on your behalf, or to otherwise address the committee. Counsel’s role is that of an adviser. You are at liberty to confer with your counsel, but that discussion will not be recorded by Hansard. I repeat that it is for you, the witness, to make any submission and answer the committee’s questions.

Now, I will just take a bit of time to go through why we are here so that we can have everything in context. The house resolved on 20 February 2008 that —

- (1) That the letters tabled in the house on 19 February 2008 by the President be referred to the Standing Committee on Procedure and Privileges for the committee to consider and report to the house on —
 - (a) whether the letters constitute an “unreserved written apology” in accordance with the resolution of the house on 4 December

2007 and to determine the merit or otherwise of the arguments contained in the purported apologies; and

- (b) what further action may be taken by the house.
- (2) The committee have access to documents in the possession of the Clerk relating to the inquiry of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations.

With respect to that committee report, finding 19 states —

The Committee finds that, between 13 June 2007 and 10 September 2007, Mr Julian Grill provided Mr Brian Burke with copies of documents that had been requested of Mr Grill by the Committee in a private hearing, and that Mr Grill had further advised Mr Burke of the fact that those documents had been requested by the Committee.

The provision of the documents and the accompanying disclosure of the private proceedings of the Committee is a breach of privilege and a contempt of the Parliament.

Recommendation 20 of that committee's report stated —

The Committee recommends that the Legislative Council order Mr Julian Grill to make an unreserved written apology to the House for the unauthorised disclosure of the Committee's private proceedings to Mr Brian Burke, and that the apology be provided within seven days of the order of the House.

It is not for this committee to look behind the merits or otherwise of the decisions of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations or of the decisions of the house. We are dealing with a task that the house gave us on 20 February 2008, and that referral from the house is effectively in three parts: first, whether the letters constitute an “unreserved written apology” in accordance with the resolutions of the house on 4 December 2007; second, to determine the merit or otherwise of the arguments contained in the purported apologies; and, third, what further action may be taken by the house. In regard to the first part, you have not complied with the order of the house in that you have not provided an unreserved written apology. Therefore, there is no need for us to consider the first part with respect to yourself. Similarly, part two is not applicable because there is no apology. The only outstanding matter is in relation to part three as to what further action may be taken by the house; and that is our role, to recommend to the house what further action may be taken in light of the fact that no unreserved written apology has been received. To assist the committee in recommending to the house what further action should be taken, the committee would like you to explain why you did not comply with the order of the house.

Mr Grill: Thank you, Mr Chairman. That is understood. I am a little disappointed, of course, that the committee cannot go behind the findings, but we are here to cooperate with you, and I will do my very best. I do have a written statement which I wish to read to you, and I am not sure whether you would like a copy now or at the end of

the—after I have read it. I will read it and then I will hand out copies. Mr Chairman and members —

My decision not to apologise was one which was not taken lightly. It was a decision made in light of my deep felt conviction that I have done nothing wrong, a conviction subsequently confirmed by the best legal advice available, namely from Steven Penglis of Freehills and from Stephen Gageler Senior Counsel of the Sydney Bar: both of whom were this month listed in the Australian Financial Review newspaper as being amongst the “best lawyers” in Australia, as judged by their peers.

For his part, I note that Mr Penglis considers this to be the most serious denial of natural justice and procedural fairness to a person that he has encountered in a career spanning 25 years.

Having made these general remarks, I now turn to the specific reasons as to why I have not apologised.

1. **The Select Committee’s findings were *ultra vires*:** It was patently beyond the Select Committee’s terms of reference. If the Select Committee was concerned to inquire into whether or not I had breached the confidentiality of the Select Committee, it ought to have recommended to the Legislative Council to authorise the Select Committee to undertake an inquiry (in exactly the same way as it in fact did with respect to Mr Taylor of the *West Australian* newspaper): . . .

In that respect I refer to Mr Penglis’s letter to you, Mr President, dated 14 November last year —

2. **The Select Committee’s findings were a denial of natural justice:** The Select Committee recalled me to request me about the matter without informing me of its intention to do so. No mention of the fact was made at the commencement of the hearing (notwithstanding the fact that **The CHAIRMAN** purported to inform me as to why I was there by reading to me the revised terms of reference). I was given no notice of the assertion made against me, was not given an opportunity to prepare my “case”, was given no opportunity to cross-examine any witness or call any witnesses: . . .

And once again I refer to Mr Penglis’s letter of 14 November last year to you, Mr President —

[11.30 am]

3. **The Select Committee’s finding is without substance in fact:** There is no evidentiary basis for any finding of contempt against me. In relation to me, the Select Committee —

As you have already read out—I will read the words again, Mr Chairman, because they are important —

- a) found that:

- I “between 13 June 2007 and 10 September 2007 . . . provided Mr Brian Burke with copies of documents that had been requested of [me] by the Committee in a private hearing, and that [I] had further advised Mr Burke of the fact that these documents had been requested by the Committee”; and —

I have emphasised three words there and I will suggest to you in due course that they are very significant —

- the provision of the documents and the accompanying disclosure of the private proceedings of the Committee was a breach of privilege and a contempt of Parliament.
- b) recommended that the Council order me to make an unreserved written apology to the House.

That was the finding —

This appears to be based on Mr Burke’s evidence to the Committee that, “He [i.e. me] gave me these emails saying that he was going to be giving them to the Committee.”

Those words are important. I will read them again —

. . . he [i.e. me] gave me those emails saying he was going to be giving them to the Committee.”

When I provided copies of generic emails relating to the matter which Mr Burke had lost from his own computer, I did not say to Mr Burke that the copies of emails had been requested by the Committee (let alone identify which of those documents provided were those requested by the Select Committee) and nor had I then provided the same to the Select Committee. Both of these matters are confirmed by Mr Burke’s own evidence . . .

Once again I refer to Mr Penglis’ letter of 14 November —

Indeed, I had tried to identify for myself the specific emails requested by the Select Committee, but was unable to do so. Wishing to assist the Committee to the fullest extent possible, I therefore provided to the Select Committee copies of all emails —

I emphasise —

I considered to have any relevance to the subject of the Committee’s inquiry.

You can go back to the records of the committee and the letter that I sent in. Nowhere in that letter do I identify those emails in the way that the committee had requested, because I could not, but rather than disappoint them, I sent them all in, in an endeavour to cooperate with the committee.

Moreover, the terms of the finding are that not only did I provide Mr Burke with copies of documents, but that “[I] had further advised of the fact that those documents had been requested by the Committee.” There was simply no evidence to support such a finding: the only evidence was that of Mr Burke, and that was to the effect that I was going to give the documents to the Select

Committee, not that the documents “had been requested by the Committee” or “had been given to the Committee” . . .

Once again, I refer to Mr Penglis’ letter of 14 November —

In Parliament —

I think you were all there —

on 4 December 2007, the Honourable Giz Watson noted the above facts, namely that Mr Burke’s evidence did not support the Select Committee’s findings.

I quote her statement; I quote Giz Watson —

“The key words in that finding are “that **Mr Grill** had further advised Mr Burke of the fact that those documents had been requested by the Committee”.

End of that quote —

Mr Grill and his lawyers have written to members arguing that there was no evidence to justify this finding. They point out that Mr Burke’s evidence was that **Mr Grill** told him that he was going to be giving emails to the committee, not that the committee had requested them of him. This is a reasonable point, I believe, and there does not appear to be sufficient to support a finding that **Mr Grill** disclosed proceedings of the Select Committee. I have reservations about supporting this recommendation. I will not oppose it, but I think that a reasonable point has been raised by **Mr Grill** about the finding. I indicate that I have some sympathy for that point of view.

End of quote, and the page in *Hansard* is page 8 156. I move on to point four —

4. **The concept of jailing people for contempt without a fair trial constitutes a fundamental denial of human rights:** it is opposed by the Attorney General, by the Honourable Kim Chance MLC (in the Brian Easton report), the Law Society of Western Australia, the Bar Association of Western Australia and any fair minded individual who cares to think about the matter.

In this regard, the West Australian newspaper of 21 December 1994 reported the then Opposition Leader, now Attorney General, as stating that:

- a Labour government would overturn the law which allowed Parliament to jail people for contempt;
- he found the jailing of a WA citizen by the Legislative Council “without any right to be heard . . . to be horrific”;
- “the Labour government is opposed to such a fundamental denial of humans rights as imprisonment without trial”;
- he thought “every decent WA citizen would be appalled with the Parliament exercising this power”;
- he didn’t agree “with any system of putting people in jail without allowing them to have a fair trial”.

Further, the Honourable Kim Chance MLC, as a dissenting member of the Select Committee of Privilege Concerning the Non-Compliance by Brian Easton with the Order of the House of June 22, 1994, was of the view that (as summarised in section 9.2.4 of the Report, page 16):

- “regardless of the circumstances, imprisonment should not be an option available to this, or any, House of Parliament, and that as the only remaining options are to either not act, or to impose a censure on Mr Easton, that a censure should be imposed”;
- “that the necessity for Parliament to vindicate its authority by means of its own has ceased to exist in modern society in which Parliament has less need to impose that authority”;
- “in a more tolerant society than that which existed at the time of the precedent offered by the Crown Solicitor [in section 9.2.3 of the Report], it should be expected that the community in general would not demand the exercise of the penalty of imprisonment for a contempt of Parliament”; and
- “it is possible that the exercise of Committal powers for this offence would generally be regarded as anachronistic and petty”.

That is the end of those quotes —

I note —

This is me, now —

that Mr Penglis wrote to the Honourable Kim Chance MLC on 4 March 2008 concerning the views he expressed in relation to the Easton matter. I now table a copy of that letter.

When Mr Penglis did not receive a response from the Honourable Kim Chance MLC, Mr Penglis wrote to the Premier, the Honourable Alan Carpenter MLA, on 10 March 2008. I now table a copy of that letter and a letter in response from the Department of Premier and Cabinet dated 20 March 2008.

[11.40 am]

5. Mr Gageler SC has confirmed the views of Steven Penglis which Mr Penglis expressed in his various letters to the President of the Legislative Council, namely that:
 - Finding 19 and Recommendation 20 were ultra vires the Committee and were procured in circumstances where **Mr Grill** was denied natural justice;
 - There was no evidence before the Select Committee that **Mr Grill** advised Mr Burke that the documents had been requested by the Committee;
 - **Mr Grill** was right to disagree with Counsel Assisting the Select Committee on 8 October 2007 in relation to the suggestion put to **Mr Grill** that the provision of the documents

was contrary to a direction of **The CHAIRMAN** of the Select Committee.

Indeed, Mr Gageler SC states in his opinion to Freehills that the deficiencies of the procedures of the Select Committee “highlights the egregious failure of procedural fairness that has occurred”.

Mr Gageler SC is further of the view that there is strong argument that the Legislative Council lacked power to make the order of 4 December 2007, and similarly would lack power to seek itself to deal with **Mr Grill**'s non-compliance as contempt of Parliament.

Once again I refer to Mr Penglis' letter of 15 February 2008. My notes continue —

I would ask you to look at my parliamentary conduct. Over 24 years of service. There has never been an occasion in which I have ever been ejected from Parliament or been found guilty of unbecoming conduct. My whole record is one of respect for Parliament and its processes.

Penultimately, I would invite you to contemplate the inherent contradiction of the current demand for me to apologise for something that I vehemently deny. If I apologise, I am admitting the contempt of Parliament. I ask you as to whether it is proper to use the powers of Parliament to threaten to jail me if I do not apologise and thereby admit the contempt. Such a situation, is regarded as totally repugnant in every court in the land and in every country that has at least a rudimentary judicial system.

6. My position remains as it always has been, namely, that:
 - notwithstanding the serious defects in process, I would not shield myself behind those defects if I had done something which warrants or even arguably warrants an apology;
 - for reasons which I have given, I did not do something which warrants or even arguably warrants an apology;
 - the prospect of me being imprisoned without fair trial is, I am sure you will agree, abhorrent.

Thank you gentlemen and ladies.

The CHAIRMAN: Does any member wish to ask Julian Grill a question?

Hon KEN TRAVERS: I have just the one. Was there any reason you did not provide a written response to the Parliament within seven days of the order?

Mr Grill: My lawyer did. My lawyer sent in two or three letters.

Mr Penglis: It was within seven days of the order.

Mr Grill: Yes.

Hon KEN TRAVERS: But I am asking if there was any reason why you did not respond yourself to the Parliament.

Mr Grill: Well, my lawyer responded on my behalf.

The CHAIRMAN: Members, we will have a short adjournment so that the committee can consider what you have said. If you would be kind enough to wait on the premises, we will invite you back in a few minutes.

Hon GEORGE CASH: Can we have copies of that document distributed now—if it is a copy of what he said?

Mr Grill: Yes; it is.

Proceedings suspended from 11.44 to 11.56 am

The CHAIRMAN: Thank you for your patience. Hon Julian Grill, you have been given an opportunity to give an unreserved apology today. Do you wish to exercise that opportunity?

Mr Grill: I am afraid I cannot for the reasons I have already indicated.

The CHAIRMAN: Thank you very much for your attendance.

Mr Grill: Is that the lot.

The CHAIRMAN: Yes; thank you. That completes the public hearings.

Hearing concluded at 11.56 am