



THIRTY-SEVENTH PARLIAMENT

REPORT 17

**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 -**

MR NOEL CRICHTON-BROWNE

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 - MR NOEL CRICHTON-BROWNE

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 purported written apology of Mr Noel Crichton-Browne for the purposes of this Report.

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 No. 13 required Mr Noel Crichton-Browne to provide an unreserved written apology to the Legislative Council for the secondary unauthorised disclosure on 30 January 2007 of the deliberations of the Standing Committee on Estimates and Financial Operations, and that the apology be given within seven days of the order of the House.
- 2.4 Pursuant to the resolution of the House, Mr Noel Crichton-Browne provided a letter, dated 10 December 2007, to the President of the Legislative Council. This letter was tabled on 19 February 2008. A copy of the letter is appended to this report (see **Appendix 1**).

Scope of Committee's Inquiry

- 2.5 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.
- 2.6 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 Purported Apology from Mr Noel Crichton-Browne

- 3.1 The Committee considered Mr Noel Crichton-Browne's correspondence of 10 December 2007 at a committee meeting on 28 February 2008. At that meeting, the Committee resolved that -
- (a) the correspondence did not constitute an “unreserved written apology” in accordance with the resolutions of the House on 4 December 2007; and
 - (b) Mr Crichton-Browne be requested to appear before the Committee and give oral evidence to assist members' further consideration of the merit or otherwise of the arguments contained in his purported apology, and what further action may be taken by the House.
- 3.2 Accordingly, Mr Crichton-Browne appeared before the Committee in open session on 27 March 2008.

Hearing with Mr Noel Crichton-Browne - 27 March 2008

3.3 During his evidence hearing on 27 March 2008¹, Mr Crichton-Browne advised he had previously provided an apology for the relevant secondary disclosure to the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations. This apology was contained in Mr Crichton-Browne's submission provided to the Select Committee on 4 November 2007.

3.4 The form of that apology was -

If Mr Crichton-Browne did learn independently from the Hon [Anthony] Fels that AMEC had written to the committee and as a result Mr Crichton-Browne was responsible for the 'secondary' disclosure claimed in finding one, naturally he regrets the error and apologises for it.

3.5 Mr Crichton-Browne gave evidence to the Committee that the preamble to the apology contained in his letter to the President dated 10 December 2007 " ... in no way deflected from the strength of the apology ..."².

3.6 Prior to the conclusion of the hearing, the Chairman invited Mr Crichton-Browne to provide an unreserved apology. In response, Mr Crichton-Browne offered to paraphrase the apology he previously provided to the Select Committee, stating -

*If I was responsible for the secondary disclosure claimed in finding 13, naturally I regret the error and I apologise for it.*³

3.7 In response to a further question from the Chairman, Mr Crichton-Browne stated that he stood by those words (as quoted in paragraph 3.6).

3.8 No relevant arguments were raised by Mr Crichton-Browne in his letter to the President dated 10 December 2007 that were not available to the House prior to its resolution of 4 December 2007, and therefore no further consideration of the merit or otherwise of the arguments contained in his letter of 10 December 2007 was required by the Committee.

4 FINDINGS

4.1 The Committee finds that Mr Crichton-Browne's letter to the President dated 10 December 2007 did not constitute an "unreserved written apology" in accordance with the resolutions of the House on 4 December 2007.

¹ A copy of the *Transcript of Evidence* of the Hearing of 27 March 2008 is attached at **Appendix 2**.

² Mr Noel Crichton-Browne, *Transcript of Evidence*, 27 March 2008, p8.

³ Mr Noel Crichton-Browne, *Transcript of Evidence*, 27 March 2008, p9.

4.2 However, the Committee finds that Mr Crichton-Browne's letter to the President dated 10 December 2007 constitutes an apology to the House.

4.3 The Committee finds that Mr Crichton-Browne apologised again during his closing remarks at the evidence hearing before the Committee on 27 March 2008.

4.4 The Committee finds Mr Crichton-Browne's apologies to be sincere.

5 RECOMMENDATION

5.1 The Committee recommends that no further action be taken by the House regarding this matter.

Recommendation 1:

The Committee recommends that no further action be taken by the Legislative Council against Mr Noel Crichton-Browne in relation to matters arising from Select Committee Recommendation No. 13, which was adopted by the House on 4 December 2007.



Hon Nick Griffiths MLC
Chairman

8 April 2008

APPENDIX 1

**LETTER FROM MR NOEL CRICHTON-BROWNE TO
THE PRESIDENT PURSUANT TO THE RESOLUTION OF
THE HOUSE (TABLED 19 FEBRUARY 2008)**

APPENDIX 1
LETTER FROM MR NOEL CRICHTON-BROWNE TO
THE PRESIDENT PURSUANT TO THE RESOLUTION OF THE
HOUSE (TABLED 19 FEBRUARY 2008)

NCL

Noel Crichton-Browne

10 December 2007

The Hon Nick Griffiths MLC
President of the Legislative Council
Parliament House
Perth

Dear Mr Griffiths

I am informed by the Clerk of the Legislative Council that I am required to provide an apology to the Legislative Council.

I understand I am to apologise for a secondary disclosure which was "in effect, that there had been a *"hiccup"* because the Association of Mining and Exploration Companies Inc. (AMEC) had written to the committee chairman saying that AMEC understood that the committee was looking at the proposed inquiry, and that the AMEC letter had caused *"some considerable heartburn"* because committees deliberate in camera.

As a consequence of this secondary disclosure the committee found that:

"The disclosure interfered with the functioning of the Standing Committee on Estimates and Financial Operations by eroding the confidence and mutual trust amongst the Members of that committee and further disclosing the confidential information to a wider number of people"

I am informed by the Secretary of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations that the report provides no evidence that any evidence was given by any member of the Standing Committee on Estimates and Financial Operations that that the disclosure complained of had eroded the confidence and mutual trust amongst the Members of the committee.

In other words, on the basis of the Report tabled in the Legislative Council the finding has no basis of fact and is apparently no more than an invention of the Select Privileges Committee.

The meaning of the additional words of the finding *"further disclosing the confidential information to a wider number of people"* is entirely obscure however there is no evidence provided in the report that either I or the recipient of the secondary disclosure disclosed any *confidential information* to anybody, least of all *"to a wider number of people"*.



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It goes without saying that the disclosure did not and was not intended to create an advantage to the recipient, on the evidence did not compromise the workings of the committee, did not influence the deliberations of the committee and did not interfere with the committee's work.

The wording used by the committee to create the finding has no basis in any legislature. Equally, with respect, the penalties appear from the Report to be arbitrary and consequently cannot be measured against any known criteria.

The curious lack of penalty against the Hon Giz Watson flowing from the same report is an interesting comparison.

I am further advised by the Secretary of the Select Privileges Committee that the Report contains no evidence that the Committee gave any weight to the previous treatment by the Legislative Council of the disclosure of committee deliberations by one of its own members or of a secondary disclosure by a member's staff when considering penalties.

On that occasion the member and her staff both disclosed the full contents of an unpublished committee report. The Legislative Council when informed of the matters, chose to take no action against either person.

Finally, the Select Privileges Committee Secretary has advised me that the committee had not placed any weight in its Report on the threshold applied in matters of unauthorised disclosure by the House of Commons and other legislatures in Australia.

That threshold is generally described as "*whether the leak constitutes, or is likely to constitute, 'substantial interference with the committee's work, with the committee system, or with the functions of the House'*".

It would be misleading of me if I were not to advise the members of the Legislative Council when providing an apology that I have previously provided to the committee, a fifteen page, six thousand one hundred word rebuttal of the finding against me. The committee denied me the most basic right of natural justice by refusing to include my rebuttal or any part of it in its Report.

To my knowledge, there is no precedent in similar circumstances in the Westminster system.

Subsequent to the tabling of the Report I provided the President with material which he was good enough to consequentially table.

Besides the clear and obvious lack of balance such a denial caused, the significance of the exclusion of my rebuttal from the report is that when the Legislative Council debated the matter it did so in the absence of a defence contained as part of the Report— a remarkable circumstance.

Presumably it is not appropriate that I set out the substance of that rebuttal however I am compelled to state that I have considered the practice and procedures of all other Australian State legislatures, the House of Representatives, the Senate, the New Zealand parliament, the House of Lords and the House of Commons.

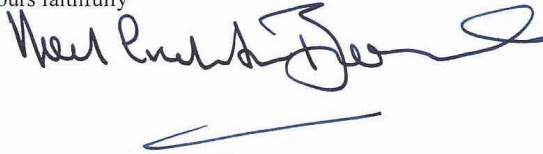
To my knowledge there is no precedent, no practice, no history and no Standing Order in any of these legislatures which when applying the minimum threshold, the allegation against me can be found to invite a penalty. In most cases "the disclosure" does not amount to a contempt worthy of inquiry.

I am with respect, obliged in abundant transparency and complete honesty to inform the Legislative Council that I have previously stated that:

- I did not deliberately commit a contempt when making my alleged 'secondary disclosure' to Mr Edel.
- I did not in my view reveal any consequential material information from the committee.
- There is no evidence the matter complained of has caused or was likely to cause any interference least of all a "substantial interference" with the committee's work, with the committee system or with the functioning of the House.
- In every respect the disclosure is so trivial and immaterial as not to justify further consideration by the Legislative Council.

That having been said, insofar as the Legislative Council has on the basis of what it has before it, required an apology from me and for me not to do so is a contempt, I unreservedly apologise.

Yours faithfully



APPENDIX 2
TRANSCRIPT OF HEARING OF
MR NOEL CRICHTON-BROWNE ON 27 MARCH 2008

APPENDIX 2
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 ONE

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 9.50 am

CRICHTON-BROWNE, MR NOEL

**Private citizen,
sworn and examined:**

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

[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 the committee.

Mr Crichton-Browne: Noel Ashley Crichton-Browne. I appear as a private citizen and I am retired.

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

Mr Crichton-Browne: Yes, I have.

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

Mr Crichton-Browne: Yes.

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 him to the committee and state why he is here.

Mr Crichton-Browne: Mr Tom Percy, QC, is here giving me invaluable advice.

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. It is for you, Mr Crichton-Browne, to make any submission and answer the committee’s questions.

Just so that we are all clear, I will take a bit of time to go through why we are here so that we can have everything in context. Recommendations were contained in the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations. The house dealt with the matter and agreed to a motion on 4 December 2007. The relevant part of that motion is that recommendations three, six, nine, 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 Operation be adopted and agreed to. Recommendation number 13 required Mr Noel Crichton-Browne to

provide an unreserved written apology to the Legislative Council for the secondary unauthorised disclosure on 3 January 2007 of the deliberations of the Standing Committee on Estimates and Financial Operations and that the apology be given within seven days of the order of the house. The house further resolved on 20 February 2008 the following —

- (1) That the letters tabled in the house on 19 February 2008 by the President be referred to the Standing Committee on Procedure and Privilege 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 —

That is this 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.

The committee has considered your written apology, which is a letter addressed to me dated 10 December 2007. That was one of the letters that was tabled in the house on 19 February and referred to in that motion that I have just mentioned. With respect to your written apology, the committee has formed the view that it is not an unreserved written apology. To assist the committee in recommending to the house the merit or otherwise of the arguments contained in your letter of 10 December 2007, and to make a recommendation to the house as to what further action should be taken, I would like you to explain to the committee why you have not complied with the order of the house. Before inviting you to do so, I should inform you that 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 the decisions of the house. I should point out that if in the course of giving your explanation you wish to disclose evidence of a confidential nature, such evidence will have to be given in private hearing. Mr Crichton-Browne, I invite you to explain to the committee why you have not complied with the order of the house.

[10.00 am]

Mr Crichton-Browne: Mr President, perhaps now is an appropriate moment for me to say, with greatest respect, I do not concede the principal point you are making, that my apology was not without reservation. Mr President, do the members of the committee have any knowledge of any other apology which I may have made in respect to the present matter before you?

Mr CHAIRMAN: We have formed the view that what has been provided is not an unreserved apology. I note you have expressed the contrary view and you are entitled to express your opinion. You have provided material to the house, which has been

tabled, and that is your letter of 10 December. If you wish to elaborate on that, or even to reiterate what is said in that, you are entitled to do so.

Mr Crichton-Browne: Thanks. I think we might be at cross-purposes. My question is: has this committee been provided with any written apology that I have given, other than the document of 10 December?

Mr CHAIRMAN: No.

Mr Crichton-Browne: I regret that, Mr President, because that apology was contained in the original submission that I made to the select committee, which the select committee chose—with the other 52 pages of my submission—to leave from its findings and you are, with some respect, labouring under a misapprehension that there has been no other apology. It says something about the point I am getting to make, and that is that the committee chose to leave out anything I had said in response to the findings against me, notwithstanding the fact that I was invited to make submissions. I am dismayed that the committee has not bothered to convey to you the apology that was contained in that initial submission.

Mr CHAIRMAN: I have set out, I think in some detail, the instructions that have been given to this committee by the Legislative Council. I cannot look behind those instructions. I note you have provided material, namely your letter of 10 December last, and in that letter you make a number of observations. I wish this matter to proceed efficiently and I note the points made in your letter. Do you wish to elaborate on those matters?

Mr Crichton-Browne: Yes, and I do not want to labour this point and invite the wrath of the committee, Mr Chairman, but the point is —

Mr CHAIRMAN: We are not that way inclined.

Mr Crichton-Browne: The point is still utterly valid—the Parliament has before it an apology and yet you are not privy to it.

Mr CHAIRMAN: I have informed you of the constraints under which we operate —

Mr Crichton-Browne: Mr President, not to interrupt you —

Mr CHAIRMAN: You have been invited to make an apology. I note your view of what you have provided, but given what has occurred, the fact that you said you have made an apology, are you now prepared to make an apology?

Mr Crichton-Browne: With respect, it is my proposition that I have, but I notice in your terms of reference that you are entitled to access all the material from the select committee.

Mr CHAIRMAN: Yes.

Mr Crichton-Browne: Well, if you had been given all the material, you would have found that on page 2 of my submission I said —

If Mr Crichton-Browne did learn independently from the Hon Fels that AMEC had written to the committee and as a result Mr Crichton-Browne was responsible for the ‘secondary’ disclosure claimed in finding one, naturally he regrets the error and apologises for it.

That is pretty unequivocal. You do not have it and yet I am being brought here to do it over again. I think I have made the point, and I am just so sorry that in spite of the fact that you have got access to all the information, you do not have the fundamental, central point of me being here and that is an apology that I gave in the first place.

Mr CHAIRMAN: Can I take it that your position still is that you provide that apology?

Mr Crichton-Browne: My position is that I have provided two apologies. Mr President, can I say before I commence my remarks that, with respect, I am particularly surprised to see Hon Ken Travers and Hon Giz Watson here today. It must be deeply troubling to any right-minded person that Hon Giz Watson and Hon Ken Travers are sitting on this committee for the purpose of this reference. In my respectful view, Hon Giz Watson is hopelessly conflicted, irretrievably compromised and, unquestionably, there is a compelling perception of bias. One of my principal complaints about the finding of the select committee against me is the conspicuous and contrasting manner in which the select committee dealt with Hon Giz Watson. Hon Giz Watson is in effect, for the purpose of this matter, wearing three hats. She was the original complainant about unlawful disclosures from a committee, which she chairs; she was a witness before the select committee who was found to have made an unauthorised disclosure from her committee, for which she was found to be in contempt of the Parliament; and she now sits as judge on a review of the matter in which another witness has been treated by that committee and whether that witness has given a full, unqualified apology. I, with respect, cannot imagine a more compromising situation. In saying that, of course, I do not for a moment presume to suggest how Ms Watson may view the matters before the committee.

Mr President, Hon Ken Travers is also open to the view that he has a conflict and therefore there is a reasonable apprehension of bias. Hon Ken Travers was found by the committee to have disclosed to a minister of the government that the committee was considering a reference into the iron ore industry and, in the face of conflicting evidence, the committee found that Hon Ken Travers had been authorised to disclose the matter. Having been cleared, so to speak, Hon Ken Travers now sits in judgement upon the efficacy of the response of another witness who was found to have provided unlawful information, albeit some might say of a trivial nature. Being a member of the committee from whence the unlawful disclosure was allegedly made, there can be a perception that he may well have a predisposition about the affairs of his committee.

It is open to a reasonable person to have an apprehension of a perception of bias by Hon Ken Travers. Mr President, at a time when the Legislative Council is addressing the question of whether two witnesses before it have given the Council the proper respect that it believes it deserves, by the presence here today of Hon Giz Watson and Hon Ken Travers, I respectfully submit that the Council may invite the view that it has less than proper regard for its own standings.

If I might presume to say so, committees of the Parliament must, in every respect, be above reproach for the compelling and irresistible reason that save for where there is conduct exercised beyond their powers, committees are accountable to no-one other than the Parliament itself. The powers of the Parliament in respect of its dealings with members of the public are extraordinary and there can be no higher duty of members of Parliament than to exercise them with impeccable integrity. One should be able to

look with confidence, certainty, and trust the body from which powers of all other jurisdictions and authorities flow.

[10.10 am]

The imperfections of other bodies with powers to deal with the rights and obligations of citizens are accountable by appeals to higher authorities. No such appeal may be made against the Parliament. Consequently, in matters of bias, one would expect members to be unfailingly scrupulous in ensuring that there cannot be the slightest doubt, question or the vaguest apprehension of the perception of bias in their dealings with their citizens. I say this in the most generous way possible—one might well be drawn to the conclusion that Hon Giz Watson and Hon Ken Travers are not sitting on this committee because they should be, but rather because they can. Mr Chairman, I assume that does not invite a comment from you. Insofar as I am dealing with the question of bias, and while dealing with a matter of bias, I should perhaps address the matter of the presence on the select committee of Hon Adele Farina. There can be no question that Hon Adele Farina by any measure bore the indelible —

Mr CHAIRMAN: Mr Crichton-Browne, what we are concerned about, as a committee, is recommendation 13 of the select committee. Recommendation 13 was adopted by the Legislative Council. We cannot look behind that decision, which was to require you to provide an unreserved written apology to the Legislative Council for that secondary unauthorised disclosure on 30 January 2007. Matters to do with Hon Adele Farina, who is not a member of this committee, are not relevant to the matter that we have to deal with. In your letter of 10 December, if I can just return you to that, you make a number of observations. The Legislative Council has required you to provide an unreserved written apology to it. You have said that you have given one to a select committee. We cannot look behind what the resolution of the house was. The matter can probably be dealt with quite efficiently if you were just to say, “I unreservedly apologise to the Legislative Council.”

Mr Crichton-Browne: I understand that, Mr Chairman, but with respect, so as to give proper meaning to my apology, it is necessary to outline my experience before the committee. Now I understand that might go outside your terms of reference, but I seek in all the circumstances, and because of the seriousness of this matter, that you indulge me and at least allow me to put forward for the first time before a committee the matters that dwelt upon my mind when I was addressing the request for an apology. I ask you to do no more than to indulge me and allow me to go through the process, and we can then proceed to the matters that are principally of concern to you.

Mr CHAIRMAN: I will provide some latitude, but let us not go too far.

Mr Crichton-Browne: Okay. Thank you. I do apologise, there is one other matter. I was asked by the secretary to provide 11 copies of material that I was bringing today. It is here. I am happy to tender it. I seek to tender it now if that be your wish.

There can be no question that Hon Adele Farina by any measure bore the indelible stain of a perception of bias and should not have participated in the proceedings of the select committee. It is inconceivable that having given the evidence that she did to the CCC, that there would not exist a reasonable apprehension of bias by Hon Adele Farina. The explanation in the select committee’s report for Hon Adele Farina’s presence on the committee is startling. To quote the report —

Hon Adele Farina MLC is only one of three Members . . .

And as a lawyer —

. . . through her training is able to objectively assess the facts before the Committee.

It apparently does not matter that she may have been hopelessly biased, because she was only one-third of the committee, and as a lawyer, we must trust her. These statements reflect the general failings of the committee to understand the minimum standards of fairness and natural justice as I experienced. On that basis, Justice McKechnie could have sat on the Mallard appeal and pleaded that he was only one of the three appeal judges. What these remarkable excuses for Hon Adele Farina's presence on the committee demonstrate is that there is apparently no intellectually sustainable defence for her presence. I only raise the matter of her presence insofar as it may affect my standing before that committee.

It is an unfortunate truth to observe that in recent times it has become the practice of the government to link and bracket me with the alleged sins of Mr Burke. To put it in the vernacular, when attacking one of their own for political advantage, the government attempts to damage the Liberal Party by also attacking me. In the present rough and tumble of politics, it suits the government to attempt to have the Liberal Party, through me, share their pain. Consequently, an apprehension of bias by Hon Adele Farina against Mr Burke can amount to an apprehension of bias also against me.

In terms of the deliberations of the Legislative Council, which bore heavily on me when I was deliberating about my apology, may I respectfully put to the committee that a member of the public who is subject to an adverse finding by a committee of the Parliament should be able to go boldly and with confidence, sure in the knowledge that in deliberating upon the committee's findings, the house will do so with legitimate and proper consideration. In my view, that was not to be the case in respect of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations. My general apprehension about the political nature of the proceedings of the select committee were realised by the manner in which Hon Adele Farina and her parliamentary colleagues collectively dealt with the committee's findings in the Council. One might expect that a member of a parliamentary committee who has given her name to the findings of a committee would support her findings in the Parliament. That was not to be the case with this committee. The ink had barely dried on the committee report when Premier Carpenter announced on behalf of Hon Adele Farina, two days after tabling the report, that Hon Adele Farina had abandoned two of her findings. Mr Carpenter also spoke on behalf of all Labor Party upper house members. I daresay many members of the Legislative Council had not so much as read the report by that time. True to Mr Carpenter's word, Hon Adele Farina voted against two critical findings of her committee. Had Hon Adele Farina previously held the view of the report taken by Mr Carpenter, she would of course have tabled a minority report. As a result of Mr Carpenter's announcement, on the occasion of the debate on the select committee report, 14 members of the Council had already bound themselves to a caucus decision to vote in a certain way in respect of the report, even before a single word of the debate had taken place in the Council chamber.

To add to the tortured fate of the committee's report, I had written 52 pages of rebuttal, which the committee not only refused to publish in its report and was therefore not available at the time to all parliamentarians to read and deliberate upon, but also the committee instructed me that I was not at liberty to disclose my rebuttal to members of the Legislative Council. To demonstrate the preconceived stance taken by almost half of the members of the Legislative Council, following the introduction of the report for debate by the chairman, Hon Kim Chance, on behalf of the government, and prior to any debate on the report, moved that certain findings of the report be deleted and replaced by other words in accordance with Mr Carpenter's previously announced position. A cynical observer might draw the conclusion that the report of the select committee had become a political instrument to slay the demons of the Labor Party and to inflict pain upon the Liberal Party on the way past. Equally, a cynical observer might take the view that the integrity of the report and the findings had been irretrievably corrupted by the party political processes, and that it is not the response of those members of the public subject to adverse findings who have compromised the integrity of the report. Might I respectfully do no more than ponder that if the members of the select committee do not respect their own findings and a large number of Legislative Councillors had been directed to vote in a certain way in respect to the committee report, on what basis do members of the Legislative Council demand a greater respect for their findings by members of the public, not the least those traduced by it? If I may presume to say so, with the greatest respect, the institution of Parliament may on this occasion be more damaged by some who represent it rather than by those who appear to offend it.

Mr Chairman, I have no wish to repeat all the matters raised in my earlier correspondence, which I presume the committee has before it, although I am dismayed to see that they do not have the central golden nugget of it; that is, my apology.

[10.20 am]

But there are a number of matters that compel attention. So that we are all clear—most of all, me—my sins in the eyes of the select committee is that in the midst of a telephone conversation I said to a lawyer that a letter he had been responsible for writing to the committee had “caused a hiccup”, and that the letter had caused some considerable heartburn. That is the extent and the totality of the sin that the committee found to be a breach of privilege.

Unlike Hon Giz Watson—I make no criticism, Ms Watson—I did not improperly disclose to any other person what proposed term of reference the committee was considering or, for that matter, like Hon Ken Travers, with or without permission of the committee. Nor did I disclose any deliberations of the committee—simply that the letter had caused a hiccup. The committee found that in disclosing that a hiccup had been caused, I committed a secondary disclosure. As a consequence of the secondary disclosure, the committee found that —

The disclosure interfered with the functioning of the Standing Committee on Estimates and Financial Operations by eroding the confidence and mutual trust amongst the Members of that committee and further disclosing the confidential information to a wider number of people.

I am informed by the secretary of the select committee that the report provides no evidence that any evidence was given by any member of the Standing Committee on Estimates and Financial Operations that the disclosure complained of had eroded the confidence and mutual trust amongst the members of the committee. In other words, on the basis of the report tabled in the Legislative Council, the findings had no basis of fact and are apparently no more than an invention of the select privileges committee. The meaning of the additional words of the finding—"further disclosing the confidential information to a wider number of people"—is to me entirely obscure. However, there is no evidence provided in the report that either I or the recipient of the secondary disclosure disclosed any confidential information to anybody, least of all to a wider number of people. The fact of the matter is that the committee did not know of my secondary disclosure during its deliberations so it could hardly have had the effect alleged by the select committee. Put bluntly, as I understand, matters with respect to this finding of the committee are without fact or substance.

If I might turn briefly to the penalty. The penalties appear from the report to be arbitrary, and consequently cannot be measured against any known criterion. The curious lack of penalty against Hon Giz Watson flowing from the same reports is an interesting comparison. Hon Giz Watson clearly disclosed the proposed reference to seek the advice of a third person. It follows ipso facto that she disclosed the proposed reference so as to expose herself to influence by a third person as to how she may deal with the proposed reference. It is not unreasonable, I believe, to speculate that Hon Ken Travers, in speaking to a minister of the government, wanted to be personally exposed to the views of the government and to expose the wider committee to the views of the government. I am further advised by the secretary of the select privileges committee that the report contains no evidence that the committee gave any weight to the previous treatment by the Legislative Council of the disclosure of committee deliberations by one of its own members or of a secondary disclosure by a member's staff when considering penalties. On that occasion the member and his staffer both disclosed the full contents of an unpublished committee report. The Legislative Council, when informed of the matters, chose to take no action against either person.

Finally, the select privileges committee secretary has advised me that the committee had not placed any weight in its report on the threshold applied in matters of unauthorised disclosure by the House of Commons or any other legislatures in Australia. That threshold is generally described as whether the leak constitutes or is likely to constitute substantial interference with the committee system or with the functions of the house.

If I might turn for a moment to the question of the CCC and the matter of the committee's relationship with the CCC and the use of its intercept telephone conversations. Access to and use by the committee of telephone intercepts obtained by the CCC appears, to my imperfect memory, to be in contradiction of a statement made by the former chairman of the CCC, Judge Hammond, who, as I recall matters, stated that the parliamentary committee was not authorised as a body to receive CCC intercepts. The select committee has blandly responded to challenges about its use of these tapes by referring in its report to what it viewed as the relevant allowing provisions and reference to an undisclosed legal opinion obtained by a Mr Quinlan.

We are not told who Mr Quinlan is, what particularly qualifies him to give an opinion on this matter or who recommended him.

In my view there are two crucial threshold matters that the committee has failed to adequately address in its report. The first is whether the committee satisfied itself that the tapes provided to the committee had been lawfully obtained by the CCC, for which there is no evidence given in the committee report. The second is whether the committee had authority to obtain the intercepts, for which the report gives no evidence other than a number of assertions by Mr Quinlan. The studious failure of the committee to disclose the full advice given on these matters leaves a pall of doubt over the conduct of the committee in using these intercepts. Equally, the committee's failure to provide a full and frank account of its dealing with the CCC is in my view a cause of very considerable disquiet. Putting aside Mr Urquhart's serendipitous appearances as counsel assisting the committee, the select committee's dealings with the CCC could give rise to a question of collusion. Hon Barry House in his speech when referring to the CCC said they involved an interchange of a lot of advice, documentation and information. The disclosure of any information by the committee to the CCC may well involve a contempt of the Parliament.

If I might turn briefly and finally to the examination by legal counsel. My reasons for holding that the committee was not empowered to engage legal counsel to examine witnesses are set out in my formal statement. However, I twice wrote to the committee seeking advice for the authority and basis upon which the committee had resolved to use private counsel to examine its witnesses. As with other matters, the committee refused my request for frankness, openness and transparency. I received the following communication from the secretary of the committee: "The committee considered your request for further information at its meeting today and resolved to reiterate its previous advice that a parliamentary committee has the right to exercise its powers and conduct its investigations as it sees fit in accordance with procedures agreed by the committee and subject to the rules of the house. The committee has determined what procedure it will apply." The answer to my request left me devoid of any substantial advice as to the grounds upon which the committee relied to engage counsel to examine witnesses. Fundamentally, the integrity of the house depends on having a sound and certain framework to establish order in its proceedings. When the proceedings of the house directly touch upon the rights and obligations of members of the public, the public should be able to turn to the process for clarity and certainty. The truth of the matter is that the select committee exceeded its powers, ignored the standing orders and, with respect, the advice given by the former Clerk of the Legislative Council is little more than a nonsense. Hon Adele Farina attempted in her Council speech to defend the use of counsel to examine witnesses. If I may presume to say so, her speech reinforces a view that the select committee acted entirely outside its authority. The effect of the committee's behaviour was to take unto itself, contrary to specific standing orders, the right to have counsel examine witnesses, while at the same time enforcing a standing order that prevented my counsel from addressing the committee. If, as Mr McCusker and others have argued, the committee was not empowered to allow counsel to ask questions of the witness, my appearance at the second hearing of the committee is entirely invalid because, to my memory, not one question was directed to me by members of the committee. With the greatest of respect, it seems to me that if the Council is of a mind that my apology should not now

contain an explanation, it might not unreasonably be construed that the Council is offended by the truth.

In conclusion, as Luther said at Worms in 1521:“To go against my conscience is neither right nor safe”. My apology contains nothing other than unimpeachable verities. I respectfully submit that in all the circumstances, my apology in its present form is entirely adequate.

Mr CHAIRMAN: I think we have given you an opportunity to state your case.

Mr Crichton-Browne: You have, indeed, and I thank you very much.

Mr CHAIRMAN: Does any member wish to ask a question of Mr Crichton-Browne? I think I am obliged to invite you again to give an unreserved apology. That, of course, is a matter for you.

[10.30 am]

Mr Crichton-Browne: Mr President, it would be presumptuous of me to say so, but I wonder, having appeared before you today and having spoken at some small length about my apology and the reasons for it, and the fact that I believe that the preamble in no way deflected from the strength of the apology—you already have a further apology before you—and I wonder might I presume to ask whether the committee might, in its own private deliberations, reflect on what I have said and consider a determination prior to asking me to get in the trundle cart.

Mr CHAIRMAN: As to what we decide, that will be made known in due course. Does any member wish to ask a further question?

Hon GEORGE CASH: Mr President, I do not wish to ask a further question of Mr Crichton-Browne because I have heard the statement he has made. I do, however, believe that it would be appropriate for the committee to take a break to enable it to discuss some matters in private. That may require the recalling of Mr Crichton-Browne in due course.

Mr CHAIRMAN: I think we will adjourn for a few moments, Mr Crichton-Browne. If you would be kind enough to wait in the premises, we might call you back in a few minutes.

Mr Crichton-Browne: I will indeed.

Mr CHAIRMAN: Thank you very much.

Proceedings suspended from 10.31 to 10.44 am

Mr CHAIRMAN: Thank you for your patience. Mr Crichton-Browne, the committee is well aware of the fact that you have apologised. You have provided us with a detailed account of what was on your mind, and the circumstances which gave rise to your apology of 10 December. However, that apology was not unreserved. There is a distinction between an unreserved apology and an apology. An unreserved apology may be or is one that is given without reservation. It is unqualified, free from restraint, and it is not limited. It is not restricted; it is an entire apology. It is a complete apology. It is free from dissimulation. It is free from other matters. The committee invites you to make an unreserved apology.

Mr Crichton-Browne: Mr Chairman, would the words of the first unqualified apology, which I gave voluntarily without invitation, satisfy the criteria? That was, if I can just repeat the words, “If I was responsible for the secondary disclosure claimed in finding 13, naturally I regret the error and I apologise for it.”

Mr CHAIRMAN: That is a matter that the committee will consider. I take it, from what you have said, that you stand by those words?

Mr Crichton-Browne: In terms of my apologising, yes, I do.

Mr CHAIRMAN: Does any member have any other questions of Mr Crichton-Browne? Thank you very much for your attendance.

Mr Crichton-Browne: Mr President, just one other thing, of course. It was not for me to do so—and I think it is not for you to do also—but I might have been more complete if I had invited Hon Ken Travers and Hon Giz Watson to reconsider their positions in terms of sitting on this committee. Not that for a moment I presuppose that I have the slightest idea how they may approach this matter, but just for the purity of the proceedings. So I do no more than ask them to dwell upon that.

Mr CHAIRMAN: Again, thank you very much for your attendance.

Hearing concluded at 10.47 am