

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES — FIFTY-FIFTH REPORT —  
EMAIL ACCESS — STATE SOLICITOR'S OFFICE

2458. Hon Michael Mischin to the Leader of the House representing the Attorney General:

I refer to the Attorney General's refusal to disclose to Parliament the procedure followed by the State Solicitor's Office, on behalf of the Government, to identify and remove from documents provided to it those that 'may' be the subject of parliamentary privilege, and to identify the officers and staff who had access to those documents and made those decisions, and ask:

- (a) how many, and what categories of staff, of the State Solicitor's Office were engaged in perusing Members' emails and documents and making the necessary decisions;
- (b) why will the Attorney General not satisfy Parliament of the integrity of the process involved and the preservation of the parliamentary privilege by revealing the instructions issued to staff and the process by which documents have been identified;
- (c) is the Attorney General's claim that advice to Parliament that the method by which the governments' officers have undertaken that process is subject to legal professional privilege supported by legal advice to that effect and, if so, from whom and when was it sought and obtained; and
- (d) if it is the case that the objective information as to process is subject to legal professional privilege, why will the Attorney General not, in the interests of transparency and accountability, waive privilege to the extent necessary to reassure the Parliament?

**Hon Sue Ellery replied:**

- (a) The information the member seeks has already been communicated to the House in Report 56 of the Standing Committee on Procedure and Privileges. I refer the member to paragraph 6.3 in that regard. [See tabled paper no 3400.]
- (b) See (a) above. The instructions that were provided and details of the process used are annexed to Report 56.
- (c) Yes, it was subject to legal advice provided by the State Solicitor and that advice was obtained prior to my response to the relevant Parliamentary Question.
- (d) As the member is well aware, legal professional privilege is a substantive common law right of considerable import and the rationale for its preservation extends well beyond the particular subject matter or content of a communication. The State does not routinely waive legal professional privilege. It is the Standing Committee on Procedure and Privileges that has been specifically tasked by the Legislative Council to report on the matters upon which the member seeks assurances. In any event, a comprehensive statement setting out the process that was used is incorporated in Report 56.