



VICTORIA

**SELECT COMMITTEE OF THE LEGISLATIVE COUNCIL
ON THE
URBAN AND REGIONAL LAND CORPORATION
MANAGING DIRECTOR**

SECOND INTERIM REPORT

MAY 2002

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**SELECT COMMITTEE ON THE
URBAN AND REGIONAL LAND CORPORATION
MANAGING DIRECTOR**

COMMITTEE MEMBERS

The Hon N B Lucas MLC, PSM, JP — *Chairman*
Member for Eumemmerring Province

The Hon R M Hallam MLC, JP — *Deputy Chairman*
Member for Western Province

The Hon G W Jennings MLC
Member for Melbourne Province

The Hon G K Rich-Phillips MLC
Member for Eumemmerring Province

The Hon TC Theophanous MLC
Member for Jika Jika Province

COMMITTEE STAFF

Ray Wright — Secretary to the Committee

Sarah Davey — Research Officer

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Select Committee on the URLC Managing Director
Department of the Legislative Council
Parliament of Victoria
Spring St
MELBOURNE VIC 3002

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TERMS OF REFERENCE

Moved by the Hon. W. Forwood, MLC, and agreed by the Legislative Council on Wednesday, 5 December 2001 (Minutes of the Legislative Council, No. 101, 5 December 2001).

- (a) That a Select Committee of five members be appointed to enquire into and report upon any matters relating to the selection, appointment and resignation of Mr. Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.
- (b) That the Committee shall consist of two members nominated by the Leader of the Government, two members nominated by the Leader of the Opposition and one member nominated by the Leader of the National Party.
- (c) That the members shall be appointed by lodgement of the names with the President by the Leaders no later than 4.00 p.m. on Thursday, 6 December 2001.
- (d) That the first meeting of the Committee shall be held at 10.30 a.m. on Friday, 7 December 2001.
- (e) That the Committee may proceed to the despatch of business notwithstanding that all members have not been appointed and notwithstanding any vacancy.
- (f) That the Committee shall elect a Deputy Chairman to act as Chairman at any time when the Chairman is not present at a meeting of the Committee.
- (g) That three members of the Committee shall constitute a quorum.
- (h) That the Committee may send for persons, papers and records.
- (i) That the Committee may authorise the publication of any evidence taken by it in public and any documents presented to it.
- (j) That reports of the Committee may be presented to the Council from time to time and that the Committee present its final report to the Council on or before 31 May 2002.
- (k) That the presentation of a report or an interim report of the Committee shall not be deemed to terminate the Committee's appointment, powers or functions.
- (l) That the Committee shall, unless it otherwise resolves, take all evidence in public and may otherwise sit in public at anytime if it so decides.
- (m) That the foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders and practice of the Council, shall have effect notwithstanding anything contained in the Standing Orders.

Moved by the Hon. T.C. Theophanous, MLC, and agreed by the Legislative Council on Tuesday, 19 March 2002 (Minutes of the Legislative Council, No 103, 19 March 2002).

- (n) The Committee shall include with any of its reports to the Council, minority reports submitted to it by a member or members of the Committee.

REPORT

The Select Committee on the Urban and Regional Land Corporation has the honour to report as follows:

Background

- 1 At a deliberative meeting of the Select Committee held on 10 April 2002, the Committee discussed the need to obtain telephone records relevant to its ongoing inquiry into matters relating to the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.
- 2 At that meeting, the Committee resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Department of Premier and Cabinet, the Department of Treasury and Finance, and the Department of Infrastructure, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001.
- 3 The Committee also resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Office of Premier, the Office of the Treasurer, and the Office of the Minister for Planning, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001.
- 4 The Committee further resolved to advise the three Ministers and the three relevant Departmental Secretaries of its intention to summons from Telstra telephone records of incoming and outgoing telephone calls as outlined in the resolutions in Paragraphs 2 and 3 above.
- 5 In accordance with the resolutions, summonses were issued to Mr Douglas Gration, Company Secretary, Telstra Corporation, Melbourne, on 11 April 2002. The Committee requested that the information sought in the summonses be provided by 18 April 2002.
- 6 Also on 11 April 2002, in accordance with the resolutions, correspondence was sent to the three Ministers and the three Departmental Secretaries advising them of the summonses being issued for telephone records relevant to their respective Offices and Departments.
- 7 On 12 April 2002, the Telstra Corporation sought advice on the legal basis upon which the Select Committee relied to issue the summons. On 15 April 2002 advice citing Section 19 of the *Constitution Act 1975*, the Resolution of the Legislative Council of 5 December 2001, and Standing Orders 198 and 219 of the Legislative Council was provided to Telstra.
- 8 On 19 April 2002, the Telstra Corporation wrote that it was satisfied that the Committee's powers had the force of law and that as a result the provision of information and records was not precluded either by the Commonwealth *Telecommunications Act 1997* or the *Privacy Act 1988*.
- 9 The Telstra Corporation further advised, however, that logistical matters associated with the summons required clarification. Accordingly, the Secretary of the Committee met with Telstra representatives on 23 April 2002 to discuss these matters.

Intervention of the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly

- 10 In its First Interim Report, the Committee reported to the Legislative Council the intervention in the affairs of the Committee of the Honourable Rob Hulls, MP, Attorney-General. The Committee reports that on 2 May 2002, the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly, wrote to Telstra raising questions about the validity of the Committee's summons to produce records.
- 11 Mr Andrianopoulos did not communicate his concerns to the Select Committee. However, on 14 May 2002, the Committee received advice from Telstra of the Speaker's correspondence (Appendix A). Telstra understandably indicated its reluctance to proceed with the Committee's summonses until the matter was resolved between the Speaker and the Committee. The Committee wishes to record its thanks to Telstra for the professional and courteous manner in which it has dealt with the Committee.
- 12 The Committee was disturbed at the Speaker's uninvited intervention in the affairs of a Select Committee of the Legislative Council, and on 14 May 2002 wrote expressing its concern and seeking a copy of all correspondence together with the advice upon which the Speaker had relied to take this course of action. Copies of the Committee's letter, together with the Speaker's response of 15 May 2002 are attached (Appendices B and C respectively).
- 13 The Committee notes that it has received no response from the three Ministers and three Departmental Secretaries concerning the issuing of summonses referred to in Paragraphs 2 and 3 above.
- 14 The Committee considers that the Speaker's intervention represents significant and unprecedented interference in the affairs of one House of the Parliament of Victoria by the Presiding Officer of the other House.
- 15 The Committee therefore formally reports to the Legislative Council its dissatisfaction with this matter and seeks direction from the House on how the Committee might now fully discharge the responsibilities conferred on it under the Terms of Reference.

Committee Room
16 May 2002

APPENDIX A



14 May 2002

Hon Alex Andrianopoulos, MP
Speaker of the Legislative Assembly
Parliament House
Melbourne Vic 3002
Fax: 03 9651 8444

Dr Ray Wright
Secretary to the Select Committee on the
Urban and Regional Land Corporation Managing Director
Parliament House
Melbourne Vic 3002
Fax: 03-9650 5253



Company Secretary

Level 41
242 Exhibition Street
MELBOURNE VIC 3000
Australia

Postal Address:
Locked Bag 4990
MELBOURNE VIC 8100

Telephone 61 3 9634 6431
Facsimile 61 3 9632 3215

Dear Sirs

**Select Committee on the Urban and Regional Land Corporation Managing Director -
Summonses To Produce Records dated 11 April 2002 issued to Telstra Corporation Limited**

I refer to the letter to me from the Speaker of the Legislative Assembly, Hon Alex Andrianopoulos MP, dated 2 May 2002 which raises questions regarding the validity of the summonses to produce records issued by the Committee to Telstra.

You will appreciate that the apparent conflict between the Speaker and the Committee as to the validity of these summonses places Telstra in a difficult position. To avoid Telstra being required to determine for itself the Committee's powers in this regard, can I ask that you seek to reach a joint position on this question and advise me accordingly. In the meantime, I will assume that the Committee does not require Telstra to produce any records at this stage unless you advise me to the contrary.

Yours faithfully

Douglas Gratton
Company Secretary

APPENDIX B



Department of the Legislative Council
Parliament House Melbourne Victoria 3002 Australia

14 May 2002

The Hon Alex Andrianopoulos MP
Speaker
Legislative Assembly
Parliament of Victoria
Melbourne Vic 3002

Dear Mr Speaker,

Select Committee on the Urban and Regional Land Managing Director

I write in respect of the implications raised by the attached letter from the Company Secretary of Telstra (dated 14 May 2002) which indicates that you have formally intervened in this Committee's determination to seek access to telephone records deemed relevant to key issues being investigated under the Legislative Council's specific Terms of Reference.

You will understand the Committee's concern at this potential conflict between the Houses relating to matters of privilege. However, before reaching a final conclusion and reporting this development to the Parliament, the Committee would request of you the basic courtesy that you provide a copy of all correspondence relating to this turn of events, so that the Committee can accurately report on both the fact and purpose of your action, and the advice you relied upon to take this course of action.

The Committee believes that it should report to the Parliament at the earliest opportunity, and it can do no more than request your most urgent response.

Please be advised that the Committee stands adjourned until 9.30 am on Wednesday, 15 May 2002.

Yours sincerely,

A handwritten signature in black ink that reads 'Ray Wright'.

Ray Wright
Secretary

APPENDIX C



OFFICE OF THE SPEAKER

LEGISLATIVE ASSEMBLY
PARLIAMENT HOUSE
MELBOURNE, VIC. 3002
TELEPHONE: (61 3) 9651 8575
FACSIMILE: (61 3) 9651 8444
Email: speaker@parliament.vic.gov.au

Received 11:05 pm
15. 5. 2002

Dr Ray Wright
Secretary of the Select Committee on the
Urban and Regional Land Managing Director
Department of the Legislative Council
Parliament House
Melbourne 3002

15 May 2002

Dear Dr Wright

SELECT COMMITTEE ON THE URBAN AND REGIONAL LAND CORPORATION MANAGING DIRECTOR

I write following receipt of your letter of 14 May at 11.55 pm yesterday and our subsequent telephone discussion. As indicated in that discussion, the expectation that I would be able to formally respond by 9.30 am today was entirely unrealistic given my commitments when the Legislative Assembly is sitting.

Whilst it is correct that I did write to Telstra on 2 May 2002 (and attach a copy of that letter), I did so not to 'formally intervene' in the proceedings of the Committee but in order to ensure the safeguarding of the rights and privileges of the Legislative Assembly and its members.

In my view two principles are in issue:

- 1 **Independence of the Houses.** It is a clearly established principle that each House operates independently as evidenced in *May's Parliamentary Practice*, 22nd edition, pages 88-9:

... underlying the Bill of Rights is the privilege of both Houses to the exclusive cognisance of their own proceedings.

Further, in the *House of Representatives Practice*, 4th edition, page 34, it is stated:

The right inherent in each House to exclusive cognisance of matters arising within it has evolved through centuries of parliamentary history

Moreover, procedures have been adopted by both Houses to prevent disputes arising between them. For example, offensive words are not to be used by members of one House against the other, and debates of the other House during the current session are not to be alluded to.

The Committee, prior to issuing the summons, had already sought leave for the Treasurer and other ministers to attend before it as witnesses and leave was refused by the Assembly. That request was made following the long-established principle that one House cannot summon as a witness a member of the other House. In my view, the principle that requires such a request can be applied to the present situation. The Assembly had already taken a decision on the ministers giving evidence, the Committee then attempted to obtain records relating to the Treasurer by issuing a summons against a third party.

The Legislative Assembly has independent privileges. Those privileges are undoubtedly infringed when a committee of the Legislative Council independently issues a summons to examine the records of a minister of the Assembly. In such circumstances, as Presiding Officer, I consider it my clear duty to take steps to uphold the privileges of the Assembly. For the fundamental principle of independence of the two Houses to operate, it is vital that each House has complete autonomy.

Further, contrary to the intention behind a number of Standing Orders, attempts to make such inquiries can only serve to cause disputes between the Houses. That is exactly what has happened in this situation by the issuing of the summons by your Committee, a situation that I find very regrettable.

- 2 Powers of the Committee.** Apart from the above point, it is by no means clear to me that the Committee has the power to call for papers from Telstra. There is certainly doubt as to whether committees of the Federal Parliament have the power to call for documents from State public servants or ministers. The *House of Representatives Practice*, page 629 also sets out the view that:

the compulsive investigatory powers which the House may delegate to its committees is limited to matters on which the Parliament may legislate.

In this instance, Telstra is a statutory authority responsible to the Commonwealth Government, with no responsibility to the Parliament of Victoria. The Victorian Parliament has no power to legislate in relation to Telstra of which I am aware and the jurisdiction of the Committee to issue a summons is accordingly called into question.

As I have indicated to Telstra, I am in the process of obtaining a legal opinion on this particular issue.

I am unable to provide you with copies of any correspondence other than my letter to Telstra given, as you will appreciate, that all correspondence between myself and members of the Legislative Assembly is confidential.

Yours sincerely



Hon Alex Andrianopoulos, MP
Speaker of the Legislative Assembly



LEGISLATIVE ASSEMBLY
PARLIAMENT HOUSE
MELBOURNE, VIC. 3002
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Email: speaker@parliament.vic.gov.au

OFFICE OF THE SPEAKER

Mr Douglas Gration
Company Secretary
Telstra Corporation
Level 37
242 Exhibition Street
Melbourne 3000
Private and confidential

2 May 2002

Dear Mr Gration

**SELECT COMMITTEE ON THE URBAN AND REGIONAL LAND
CORPORATION MANAGING DIRECTOR**

It has come to my attention that the above Committee of the Legislative Council has served you with a summons to produce telephone records relating to the Treasurer of Victoria, the Hon John Brumby.

In the circumstances it is appropriate that I advise you that I am greatly concerned that the Committee may have acted beyond its jurisdiction in issuing the summons. Telstra is a statutory authority responsible to the Commonwealth Government. I am not aware of any responsibility it has to the Parliament of Victoria, or indeed that the Parliament has any ability to legislate in relation to Telstra.

Certainly doubt has been expressed as to whether committees of the Federal Parliament could call for documents from State public servants or ministers. The present summons appears to me to be analogous to just such a situation.

As a courtesy, accordingly, I write to advise you that I am arranging for formal legal advice to be obtained which I will, once available, pass on to the Treasurer.

Irrespective of that issue, it is also proper that I point out to you that the action of the Committee is in my view a clear breach of the fundamental principle of independence of the two Houses, the Legislative Assembly and Legislative Council.

The Council has previously, following established practice, requested that the Assembly gives leave to the Treasurer and other ministers to attend before the Committee as witnesses. The Assembly refused leave. It now appears that the Committee is attempting to seek evidence about a minister using a different route.

I strongly believe that it is breach of the principle of independence for either House to seek to unilaterally inquire into the conduct, or examine the records, of a minister of the other House. I have accordingly passed that advice to the Treasurer.

In the event that Telstra is seeking independent legal advice, I respectfully suggest that this letter be forwarded to the lawyers instructed.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alex Andrianopoulos', written in a cursive style.

Hon Alex Andrianopoulos, MP
Speaker of the Legislative Assembly

EXTRACTS FROM THE PROCEEDINGS

The following extracts from the Minutes of the Proceedings of the Committee show Divisions which took place during the consideration of the Draft Report.

The Committee divided on the respective questions —

- (1) That paragraphs 2, 3, 7, 9, 11, 12, 14 and 15 stand part of the Report.
- (2) That the Heading above Paragraph 10 stand part of the Report.
- (3) Draft Second Interim Report — That the Draft Second Interim Report as amended, together with Appendices and Extracts for the Proceedings, be adopted as the Second Interim Report of the Committee.

In each case the result of the Division was:

Ayes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

Noes 2

The Hon G W Jennings
The Hon T C Theophanous

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Ayes.

Severally resolved in the affirmative.

* * * *

Paragraph 2

At that meeting, the Committee resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Department of Premier and Cabinet, the Department of Treasury and Finance, and the Department of Infrastructure, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the following words be inserted after "2001" —

The Committee did not consider any implication of logistical difficulties or privacy provisions that may place limitations on access to this information.

Question — That the words proposed to be inserted be so inserted — put.

The Committee divided

Ayes 2

The Hon G W Jennings
The Hon T C Theophanous

Noes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Noes.

* * * *

Paragraph 3

The Committee also resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Office of Premier, the Office of the Treasurer, and the Office of the Minister for Planning, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the following words be inserted after "2001" —

The Committee did not receive specific advice relating to its power to summons this information for Ministers who are members of the Legislative Assembly.

Question — That the words proposed to be inserted be so inserted — put.

The Committee divided

Ayes 2

The Hon G W Jennings
The Hon T C Theophanous

Noes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Noes.

* * * *

Paragraph 7

On 12 April 2002, the Telstra Corporation sought advice on the legal basis upon which the Select Committee relied to issue the summons. On 15 April 2002 advice citing Section 19 of the *Constitution Act 1975*, the Resolution of the Legislative Council of 5 December 2001, and Standing Orders 198 and 219 of the Legislative Council was provided to Telstra.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the following words be inserted after "provided to Telstra."—

The Committee did not provide specific advice to Telstra relating to its power to summons this information for Ministers who are members of the Legislative Assembly.

Question — That the words proposed to be inserted be so inserted — put.

The Committee divided

Ayes 2

The Hon G W Jennings
The Hon T C Theophanous

Noes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Noes.

* * * *

Paragraph 9

The Telstra Corporation further advised, however, that logistical matters associated with the summons required clarification. Accordingly, the Secretary of the Committee met with Telstra representatives on 23 April 2002 to discuss these matters.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the following words be inserted after "discuss these matters" —

Telstra estimates that there are in excess of 1,000 telephone services relevant to the summonses. To process a request of this magnitude would require considerable human and IT resources and cost Telstra well in excess of one million dollars and take up to 6 months to complete. It would also significantly impede Telstra's ability to comply with its legal obligations to assist law enforcement and national security organisations.

Question — That the words proposed to be inserted be so inserted — put.

The Committee divided

Ayes 2

The Hon G W Jennings
The Hon T C Theophanous

Noes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Noes.

* * * *

Heading Above Paragraph 10

Intervention of the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the heading be omitted with the view of inserting in place thereof "Correspondence of the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly to Telstra".

Question — That the heading proposed to be omitted stand part of the report — put.

The Committee divided

Ayes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

Noes 2

The Hon G W Jennings
The Hon T C Theophanous

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Ayes — Amendment negatived.

* * * *

Paragraph 11

Mr Andrianopoulos did not communicate his concerns to the Select Committee. However, on 14 May 2002, the Committee received advice from Telstra of the Speaker's correspondence (Appendix A). Telstra understandably indicated its reluctance to proceed with the Committee's summonses until the matter was resolved between the Speaker and the Committee. The Committee wishes to record its thanks to Telstra for the professional and courteous manner in which it has dealt with the Committee.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That the following words be inserted after "Select Committee" —

however the Committee notes that the Speaker is obliged to intervene where necessary to protect the integrity of the Legislative Assembly. The Committee acknowledges the right of the Speaker to protect the Standing Orders of the Legislative Assembly and provide advice relating to privilege and the subservient rights and obligations of Members of the Legislative Assembly.

Question — That the words proposed to be inserted be so inserted — put.

The Committee divided

Ayes 2

The Hon G W Jennings
The Hon T C Theophanous

Noes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Noes.

* * * *

Paragraph 12

The Committee was disturbed at the Speaker's uninvited intervention in the affairs of a Select Committee of the Legislative Council, and on 14 May 2002 wrote expressing its concern and seeking a copy of all correspondence together with the advice upon which the Speaker had relied to take this course of action. Copies of the Committee's letter, together with the Speaker's response of 15 May 2002 are attached (Appendices B and C respectively).

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That all words after "The Committee" be omitted with the view of inserting in place thereof "notes that the Speaker is obliged to intervene where necessary to protect the integrity of the Legislative Assembly. The Committee acknowledges the right of the Speaker to protect the Standing Orders of the Legislative Assembly and provide advice relating to privilege and the subservient rights and obligations of Members of the Legislative Assembly.

Question — That the words proposed to be omitted stand part of the question — put.

The Committee divided

Ayes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

Noes 2

The Hon G W Jennings
The Hon T C Theophanous

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Ayes — Amendment negatived.

* * * *

Paragraph 14

The Committee considers that the Speaker's intervention represents significant and unprecedented interference in the affairs of one House of the Parliament of Victoria by the Presiding Officer of the other House.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That all words after "The Committee" be omitted with the view of inserting in place thereof "recognises that its actions considers that such an intervention represents significant and unprecedented interference in the affairs of Members in the other House of the Parliament of Victoria by the Presiding Officer of the other House".

Question — That the words proposed to be omitted stand part of the question — put.

The Committee divided

Ayes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

Noes 2

The Hon G W Jennings
The Hon T C Theophanous

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Ayes — Amendment negatived.

* * * *

Paragraph 15

The Committee therefore formally reports to the Legislative Council its dissatisfaction with this matter and seeks direction from the House on how the Committee might now fully discharge the responsibilities conferred on it under the Terms of Reference.

Amendment moved by Mr Jennings, seconded by Mr Theophanous — That all words after "Legislative Council" be omitted with the view of inserting in place thereof "that its costly telecommunications fishing expedition has caused undue embarrassment to the House and apologises to the Parliament".

Question — That the words proposed to be omitted stand part of the question — put.

The Committee divided

Ayes 2

The Hon R M Hallam
The Hon G K Rich-Phillips

Noes 2

The Hon G W Jennings
The Hon T C Theophanous

There being an equality of votes, the Chairman (Hon N B Lucas) gave his casting vote with the Ayes — Amendment negatived.

* * * *

MINORITY REPORT

by

Hon G W Jennings MLC

Hon T C Theophanous MLC

Pursuant to Term of Reference (n)
Resolution of the Legislative Council, 19 March 2002

MINORITY REPORT

It is the view of this Minority Report that:

Introduction

The Labor Members on the Liberal and National Party dominated Select Committee wish to register their objection to the tabling of the Second Interim Report which seeks to criticise actions of the Speaker in seeking to protect the privilege of Lower House Members. The Second Interim Report was prepared by the Liberal and National Party majority who refused to refer the issues of privilege to the Clerk of the Council for advice. Nor were those Members prepared to consider issues of privacy or natural justice in seeking phone records of private persons from Telstra. What follows is a version of the Report which includes changes which were rejected by the Liberal and National Party Members which would have at least removed some of the clear bias in the majority report.

Background

- 16 At a deliberative meeting of the Select Committee held on 10 April 2002, the Committee discussed the need to obtain telephone records relevant to its ongoing inquiry into matters relating to the selection, appointment and resignation of Mr Jim Reeves as Managing Director of the Urban and Regional Land Corporation, together with any involvement of external agencies and consultants.
- 17 At that meeting, the Committee resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Department of Premier and Cabinet, the Department of Treasury and Finance, and the Department of Infrastructure, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001. The Committee did not consider any implication of logistical difficulties or privacy provisions that may place limitations on access to this information.
- 18 The Committee also resolved to summons from the Telstra Corporation a record of incoming and outgoing telephone calls between the Office of Premier, the Office of the Treasurer, and the Office of the Minister for Planning, and the City of Brisbane, and Mr Jim Reeves, between 1 October 2000 and 31 December 2001. The Committee did not receive specific advice relating to its power to summons this information for Ministers who are members of the Legislative Assembly.
- 19 The Committee further resolved to advise the three Ministers and the three relevant Departmental Secretaries of its intention to summons from Telstra telephone records of incoming and outgoing telephone calls as outlined in the resolutions in Paragraphs 2 and 3 above.
- 20 In accordance with the resolutions, summonses were issued to Mr Douglas Gration, Company Secretary, Telstra Corporation, Melbourne, on 11 April 2002. The Committee requested that the information sought in the summonses be provided by 18 April 2002.
- 21 Also on 11 April 2002, in accordance with the resolutions, correspondence was sent to the three Ministers and the three Departmental Secretaries advising them of the summonses being issued for telephone records relevant to their respective Offices and Departments.

- 22 On 12 April 2002, the Telstra Corporation sought advice on the legal basis upon which the Select Committee relied to issue the summons. On 15 April 2002 advice citing Section 19 of the *Constitution Act 1975*, the Resolution of the Legislative Council of 5 December 2001, and Standing Orders 198 and 219 of the Legislative Council was provided to Telstra. The Committee did not provide specific advice to Telstra relating to its power to summons this information for Ministers who are members of the Legislative Assembly
- 23 On 19 April 2002, the Telstra Corporation wrote that it was satisfied that on the basis of the general advice provided by the Committee that the Committee had power to request this information and that as a result the provision of information and records was not precluded either by the Commonwealth *Telecommunications Act 1997* or the *Privacy Act 1988*.
- 24 The Telstra Corporation further advised, however, that logistical matters associated with the summons required clarification. Accordingly, the Secretary of the Committee met with Telstra representatives on 23 April 2002 to discuss these matters. Telstra estimates that there are in excess of 1,000 telephone services relevant to the summonses. To process a request of this magnitude would require considerable human and IT resources and cost Telstra well in excess of one million dollars and take up to 6 months to complete. It would also significantly impede Telstra's ability to comply with its legal obligations to assist law enforcement and national security organisations.

Correspondence of the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly to Telstra

- 25 In its First Interim Report, the Committee reported to the Legislative Council the intervention in the affairs of the Committee of the Honourable Rob Hulls, MP, Attorney-General. The Committee reports that on 2 May 2002, the Honourable Alex Andrianopoulos MP, Speaker of the Legislative Assembly, wrote to Telstra raising questions about the validity of the Committee's summons to produce records.
- 26 It is our view that the Speaker is obliged to intervene where necessary to protect the integrity of the Legislative Assembly. The Committee acknowledges the right of the Speaker to protect the Standing Orders of the Legislative Assembly and provide advice relating to privilege and the subservient rights and obligations of Members of the Legislative Assembly.
- 27 On 14 May 2002, the Committee received advice from Telstra of the Speaker's correspondence (Appendix A). Telstra understandably indicated its reluctance to proceed with the Committee's summonses until the matter was resolved between the Speaker and the Committee. We wish to record our thanks to Telstra for the professional and courteous manner in which it has dealt with the Committee.
- 28 The Committee resolved at a meeting on 14 May 2002 to write to the Speaker seeking clarification of the purpose of his action, the advice he relied upon, and a copy of all correspondence (Appendix B). The Committee received two letters from the Speaker on 15 May 2002 responding to the Committee's request (C). The Committee notes that the Speaker is obliged to intervene where necessary to protect the integrity of the Legislative Assembly. The Committee acknowledges the right of the Speaker to protect the Standing Orders of the Legislative Assembly and provide advice relating to privilege and the subservient rights and obligations of Members of the Legislative Assembly.
- 29 The correspondence provided by the Speaker confirms that he wrote to Telstra following a request by the Treasurer to address issues of privilege.

- 30 It is our view that the actions of the Committee represent significant and unprecedented interference in the affairs of Members in the other House of the Parliament of Victoria.
- 31 We are of the view that the Committee should formally report to the Legislative Council that its costly telecommunications fishing expedition has caused undue embarrassment to both Houses and apologises to the Parliament.

Conclusion

It is clear from the Speaker's letter that serious doubt exists as to the power of the Committee to intervene in a way which infringes the privilege of Members of the Assembly thereby infringing the principle of independence between the two Houses. The failure of the Liberal and National Party Members to seek advice from the Clerk prior to reporting to the Parliament is improper. The Speaker has also brought into question the powers of the Committee to call for papers from Telstra and is seeking legal advice. The Committee has refused to seek legal advice as to its power over a Commonwealth body such as Telstra or to await further advice from the Speaker.

The actions of the Liberal and National Party Members in this inquiry have shown that they are not prepared to afford basic rights of privacy or proper process to witnesses or to Members of the Legislative Assembly and the actions of the Speaker are therefore justifiable.

16 May 2002