

Appendix 1

Statement by the President, 17 June 2014

Letter from Senator Bernardi, Chair, Standing Committee on Finance and Public Administration, to the President, raising a matter of privilege, dated 27 May 2014

Extracts from Hansard, Finance and Public Administration Legislation Committee, Estimates, Monday 26 May 2014

Letter from Senator Faulkner to the President, raising a matter of privilege, dated 28 May 2014

Advice from the Clerk of the Senate to Senator Faulkner, tabled during the Estimates hearing, 26 May 2014

**MATTERS OF PRIVILEGE RAISED BY THE CHAIR OF THE FINANCE AND PUBLIC
ADMINISTRATION LEGISLATION COMMITTEE (SENATOR BERNARDI) AND
SENATOR THE HON JOHN FAULKNER – STATEMENT BY THE PRESIDENT**

By letters dated 27 and 28 May 2014, the Chair of the Finance and Public Administration Legislation Committee, Senator Bernardi, and Senator the Hon John Faulkner, respectively, raised essentially the same matters of privilege under standing order 81.

The matters of privilege concern the use of closed circuit television footage to monitor a Department of Parliamentary Services employee under investigation for an alleged code of conduct breach while the person placed an envelope under the door of Senator Faulkner's office. The two elements are the possible improper interference with the free performance by a senator of the senator's duties as a senator, and the taking of disciplinary action against the person in connection with the provision of information to a senator.

In determining whether a notice of motion to refer the matter to the Privileges Committee should have precedence, I am required to have regard **only** to the following criteria in Privilege Resolution 4:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

With regard to the first criterion, it is fundamental to the law of parliamentary privilege that any act that has the effect or tendency of constituting improper interference with the free performance by a senator of the senator's duties as a senator may be treated as a contempt.

Use of CCTV information in the circumstances complained of must be regarded as a very serious matter. Both Senator Bernardi and Senator Faulkner refer to

possible obstruction and improper interference with senators in carrying out their duties and it is clear that, in this case, action is necessary to provide reasonable protection against the continuation of any improper practices that have this effect.

With regard to the second criterion, there may well be alternative means of pursuing inquiries into what happened in this particular case, including administrative inquiries within DPS using an external investigator. There is also the possibility of further inquiries by the Finance and Public Administration Legislation Committee, whether under its estimates function or its function to monitor the performance of agencies.

However, there is no satisfactory alternative means of protecting the rights of the Senate and senators except through the contempt jurisdiction. Only this jurisdiction provides the capacity to deal with any offence that may have been committed and to take the corrective action necessary to protect the rights and freedoms of senators into the future.

I have therefore determined that a motion to refer the matter to the Privileges Committee should have precedence over other business for the day on which it is given. In this case, the matters of privilege have been raised independently by two senators – one on behalf of a committee – and my suggestion is that a joint notice of motion be given.

Before I call Senator Bernardi/Faulkner, I remind the Senate that this determination of precedence is not a judgement of the substantive issues or merits of the matter, beyond the threshold judgement that:

- it is not of a trivial nature or unworthy of the attention of the Senate;
- it is necessary to take action to protect the Senate and senators against improper acts;
- there is no satisfactory remedy for dealing with the matter other than the contempt jurisdiction.

It is for the Senate to make a judgement whether a matter merits referral to the Privileges Committee.

I table the correspondence and call Senator Bernardi/Faulkner to give notice of the motion.



**STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION
Legislation Committee**

18921

27 May 2014

Senator the Hon John Hogg
President of the Senate
Suite SG 40
Parliament House
Canberra ACT 2600



Mr President

**MATTER OF PRIVILEGE ARISING FROM PROCEEDINGS BEFORE THE FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
COMMITTEE**

On behalf of the Finance and Public Administration Committee, I write to raise a matter of privilege under standing order 81 and to ask that you grant precedence to a notice of motion referring the matter to the Committee of Privileges.

The circumstances are that the committee received testimony at its estimates hearings on 26 May 2014 that officers of the Department of Parliamentary Services may have used closed circuit television (CCTV) footage that showed a person providing information to the office of Senator the Hon John Faulkner as evidence in disciplinary proceedings against that person for an alleged breach of the Parliamentary Service code of conduct.

Evidence given to the committee by DPS officers included:

- the possibility that DPS had breached the code of practice relating to the CCTV system while investigating a staff member, and that there was a possible breach of the principles in that code (p. 23);
- the breach appeared to be a by-product of access to CCTV footage that was claimed to be a legitimate use of the footage (p. 23);
- it involved an inadvertent conflict between staff management issues and the free performance by members of Parliament of their duties as members (pp. 25, 26);
- that the footage captured the staff member "doing other things in the building besides the one for which the CCTV footage was released" (p. 28);
- that those "other things" "may" involve a person providing information to Senator Faulkner in relation to his work as a senator (p. 28);
- that access to the CCTV footage was granted to verify a statement made by a staff member (p. 35);

- that there were also other cases involving use of CCTV footage (an inappropriate conduct case and a fraud case) (p. 45);
- that the CCTV footage captured the person passing an envelope under the door of suite 42 which is occupied by Senator Faulkner (pp. 52-3).

I attach a copy of the relevant parts of the transcript. None of the testimony given contradicted the allegation by Senator Faulkner that the CCTV footage had been used inappropriately to record a person or persons providing information to him in the course of his duties as a senator.

The committee is deeply concerned about the threat such conduct poses to the free performance by a senator of the senator's duties as a senator. The committee notes that Senator Faulkner has had long periods of membership of the Finance and Public Administration Committees and has, over many years, pursued issues of parliamentary administration through estimates hearings and other inquiries. If this incident is anything to go by, then it appears that no senator can have confidence that they are not the subject of electronic surveillance in Parliament House, a situation which has the potential to deter persons from providing information to senators in the course of their duties.

A second concern is the relationship between the disciplinary action taken against the staff member in this case and their provision of information to a senator's office, and the possibility that the disciplinary action was taken with a view to deterring people who provide information to senators to assist them in carrying out their duties. Testimony given was inconclusive on the connection between the taking of disciplinary action and the provision of information to a senator.

The matters that the committee therefore proposes for referral to the Committee of Privileges may be formulated as follows:

In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services for internal investigations involving DPS staff:

- (a) whether there was any improper interference, or attempted improper interference, with the free performance by Senator Faulkner or any other senator of their duties as a senator;
- (b) whether disciplinary action was taken against any person in connection with the provision of information to Senator Faulkner or any other senator; and
- (c) if so, whether any contempts were committed in respect of those matters.

The committee would appreciate your consideration of this very serious matter.

Yours sincerely



Senator Cory Bernardi
(Chair)



COMMONWEALTH OF AUSTRALIA

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SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION
COMMITTEE

Estimates

(Public)

MONDAY, 26 MAY 2014

CANBERRA

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CHAIR: The problem I have with having a trial is that it will be a smashing success until it is not. Then you realise that the trial has failed. No-one wants to see that eventuality. How do you determine it is a success unless there is a security incident?

The President: I think that is right. But even with the security we have in place, it is a success until it fails. What no-one wants is that security to fail.

Senator HEFFERNAN: It has failed today. Can I clarify one point? Yes or no, is it possible to have entrapment of people?

The President: That is part and parcel of life anywhere. I cannot say that it is peculiar to parliamentary people or to anyone else.

Senator HEFFERNAN: I have here documents that fell off the back of a truck some time ago. They include a separate report of the Wood royal commission and a whole series of other documents which name a whole lot of people who, if their names were made public, would be seriously entrapped. I will deal with that later in the day.

Senator FAULKNER: My first questions go to the Black Rod. Welcome back, albeit temporarily, Mr Hallett, to that position. I wanted to ask about the CCTV code of practice. I appreciate—and this is relevant to some of the questions that have just been asked—there is a primary role in this matter for the Department of Parliamentary Services. But I want to ask about the role of the Department of the Senate and the Black Rod—and what your understanding is. The Black Rod sits on the Security Management Board representing the Department of the Senate. That is true, isn't it?

Mr Hallett: That is correct—as the nominee of the President.

Senator FAULKNER: And the President was explaining some of the role in relation to another matter just a few minutes ago—the role of the Security Management Board. The Security Management Board has the recommendatory responsibility in relation to the CCTV code of practice, does it not? I appreciate that this is, perhaps, not core business for the Department of the Senate, but, as a member of the board, can you confirm that?

Mr Hallett: That is correct. There is an operating code of practice, or an operating procedure. The current one that I have was developed in June 2011. It was due for review in May 2014, so it is due for review now. It was authorised by the former Secretary of DPS, Mr Thompson, in his capacity of chair of the Security Management Board.

Senator FAULKNER: I have a copy of that—not from the Parliament House website, I might say. No doubt DPS listens to these estimates and they might indicate why that is not on the website. But it is able to be googled and found. That public version confirms, by the way, those dates of 23 June 2011 as the development date and, as you indicated, that it is up for review this month. What I am interested to understand is that this code of practice—not on the Parliament House website—is called the public version. As a member of the Security Management Board, can you confirm whether it is your understanding there is both a public version and a private version, effectively—that is my terminology, it may not be the accurate terminology—a non-public version of the code?

Mr Hallett: That is correct.

Senator FAULKNER: Does the Department of the Senate hold—what is it?

Mr Hallett: It is 'security-in-confidence'.

Senator FAULKNER: Let us use the correct terminology. Does the Department of the Senate hold a security-in-confidence version of the code?

Mr Hallett: Yes, it does. Perhaps I can help by saying that there are a number of operating policies to do with the security and safety of this building. I have a copy in my capacity as Black Rod. It is kept in a locked cabinet in the Black Rod's office, and this security-in-confidence version is one of those series of operating codes.

Senator FAULKNER: Yes, but there is only one code, I assume—you tell me. Is there only one code that applies to CCTV?

Mr Hallett: That is correct. There is, if you like, the unexpurgated code, the complete code, that is a security-in-confidence document that is held in my office, the Black Rod's office. My understanding is there is a public version that sets out, for building occupants, what the key principles and expectations are relating to the use of the CCTV system. There are, as we know, issues of privacy to be balanced against issues of security, and everyone has the right to know whether they are being photographed and so on.

Senator FAULKNER: So you would know if the code had changed.

Mr Hallett: I expect I would. I expect I would have been advised, or my predecessor would have been advised, through our participation on the Security Management Board.

Senator FAULKNER: To the knowledge of the Department of the Senate, has either the private security-in-confidence or public versions of this code been changed since the 23 June 2011, to your knowledge? I appreciate that I will need to ask DPS this.

Mr Hallett: Not to my knowledge. The fact that it says that the document is due for review this month would seem to indicate to me that it is a current document.

Senator FAULKNER: I have the public version which goes to part 5, the 'statement of purpose', and it outlines those purposes, subparagraphs (a) to (j). Are you able to say whether there are any additional purposes in the security-in-confidence code?

Mr Hallett: No, there are not.

Senator FAULKNER: Thank you. Part 6 of that code is 'key principles', subparagraphs (a) to (k). Are you able to say, in the security-in-confidence version of this code, whether there are any additional key principles?

Mr Hallett: There are no additional principles to my knowledge.

Senator FAULKNER: Not surprising. In relation to the security-in-confidence version of the code and the public code, those two parts of the code are effectively identical—the statement of purpose and the key principles?

Mr Hallett: That is correct.

Senator FAULKNER: Mr President, you would be aware that in terms of the statement of purposes, in paragraph 5 subparagraphs (a) to (j) outline the purposes, but paragraph 5 says: 'The CCTV systems intended to provide surveillance—this is the cover or beginning to the par—'to areas around parliamentary precincts as established by the Parliamentary Precincts Act 1988', which, of course, you have the key authority and responsibility with. 'Subject to this code of practice, the CCTV system is only to be used for the following purposes'. It outlines them—5(j): 'For any other purpose approved in writing by the presiding officers'. I just want to understand, Mr President, whether you have approved in writing any other purpose for the use of CCTV footage in this building?

The President: In what period, Senator Faulkner?

Senator FAULKNER: Since the establishment of the code, which was 23 June 2011?

The President: Not to my knowledge, but I am prepared—

Senator FAULKNER: If you had approved it, you would surely know.

The President: Yes, I know. I am just being cautious. The answer is no, but I want to make doubly sure and I will check.

Senator FAULKNER: The answer is no—that is fine. That is helpful. From the Senate President's perspective, the purposes are those that are contained in paragraph 5 of the CCTV code?

The President: Yes, as far as I am concerned.

Senator FAULKNER: Because you have not approved any other purpose in writing?

The President: No.

Senator FAULKNER: I ask you or the Senate Clerk—I am not concerned with who might answer this; this is, in a sense, hypothetical—if the President were required to approve such a purpose, and I realise you have not, would this be something that you would ordinarily seek advice about from the Department of the Senate, the Senate Clerk, or is it something for the Senate President, who has responsibilities, obviously, as a Presiding Officer with DPS, to deal with basically directly with DPS? How does it work?

The President: My view would be that it would come from the Security Management Board.

Senator FAULKNER: But I am asking whether it is direct or whether you seek advice from the Secretary of DPS of the Clerk of the Senate, or is that relationship with the Security Management Board effectively a direct relationship with the Presiding Officers? I just want to understand how it works.

The President: It is a direct relationship.

Senator FAULKNER: Thank you for that. What is your understanding, Mr President, in relation to your role as a Presiding Officer in relation to the use of parliament's close circuit TV security system?

The President: I understand that myself and the other Presiding Officer oversee the use of that CCTV.

Senator FAULKNER: What does 'oversee' mean? Do you get reports on the use of this CCTV footage?

The President: They would come through in regular Security Management Board reports, but I cannot say that they necessarily stand out in my mind as part of that reporting system.

Mr Hallett: Perhaps I can help the committee, through the chair. Under the code, the Presiding Officers have to approve release of footage, particularly where there are photographs of members of the public or if, for example, there is a criminal investigation or there is litigation. An example that occurred in the last 18 months is that a member of the public slipped and hurt themselves in the Marble Foyer. There was an insurance claim. The Presiding Officers were approached by the insurance company, by Comcover, for the release of the footage to assist with the settlement of that claim.

Senator FAULKNER: So, if an incident like that occurred, a report on an incident like that might come across the Presiding Officers' desks because of the use of CCTV footage?

The President: And that would be the only time.

Senator FAULKNER: Under what paragraph of the purposes would that occur?

The President: I do not have the code in front of me.

Senator FAULKNER: I am asking the Black Rod who is dealing with this on a—

Mr Hallett: Paragraph 5(i) says 'identify and investigate incidents or accidents that could result in a compensation or insurance claim against the Commonwealth'.

Senator FAULKNER: When I read that, it seems to me to fit perfectly within the purposes of the code. You are using an example that, if you like, fits the statement of purpose paragraph 5(i).

Mr Hallett: Correct.

Senator FAULKNER: Thank you for that. Thank you, Mr President. You would appreciate, Black Rod—because at that stage you were in that position—that I canvassed some questions as a result of an article that appeared in *The Age*. You may or may not recall this, but I asked you questions back in the February 2012 estimates round, where you talked about the strict rules and the use of closed circuit television. Do you recall that?

Mr Hallett: I do. You asked if I had seen the article and, from memory, the response from both me and Dr Laing was that we were not aware of the article, but I did say that there were procedures in place. I think, from memory, another senator followed up with some supplementary questions as to whether I would be aware if the rules were being followed or not. I think, from memory, the answer was that I would not.

Senator FAULKNER: Can I ask you, Clerk, a question. I do not know how you will answer this question. It appears that you probably can only answer it if the answer is in the negative, because I appreciate the confidentiality of your advice. In asking my question, I absolve you from any advice you have provided to me, which I am happy for you to make public. I appreciate you cannot make advices to others public if you have provided them, but I make clear and public that I absolve you from any responsibility in that regard in relation to me. So I want to ask this question; I am not sure how you might answer it. As Senate Clerk, has any advice been sought from you in relation to parliamentary privilege aspects of the use of CCTV footage? In absolving you, please feel free to indicate in my case if that is the situation.

Dr Laing: Yes, I have provided advice about the parliamentary privilege implications of the use of CCTV footage in Parliament House.

Senator FAULKNER: This is the difficult question. Are you able to say whether you have provided advice to senators?

Dr Laing: Yes, I have.

Senator FAULKNER: As I said, I have absolved you in relation to this. Can you confirm that you have provided advice to me?

Dr Laing: Yes, I can.

Senator FAULKNER: Are you able to say whether you have provided advice to the Department of Parliamentary Services or any other advice on this matter? This is how parliamentary privilege might apply to the use of CCTV footage.

Dr Laing: No, not to my knowledge. The policy has been in effect for some years; it goes back before the current version. But I am not aware of any advice on this matter. It is a very significant matter in terms of implications for parliamentary privilege.

Senator FAULKNER: You bet.

Dr Laing: I think, had there been advice, it would be in *Odgers*.

Senator WONG: Sorry, it would have been?

Dr Laing: It would have been cited in *Odgers*—or the principles behind the advice would have been in *Odgers' Australian Senate Practice*.

Senator FAULKNER: You have confirmed that no other parliamentary department—the only relevant one here being DPS—has sought administrative advice in this regard.

Dr Laing: Not to my knowledge, no.

Senator FAULKNER: In relation to those matters, Chair, I think I can progress most of them in questioning to the Department of Parliamentary Services. I hope you might allow me a little flexibility if there is a need to go to the Senate President. I will ask—and this may be too difficult a question in that it might require the Clerk to take it on notice or to answer it in written form, because of the complexities—is the Clerk able to summarise, as it affects senators, any implications of the use of CCTV footage? If that is too difficult to do—and I would totally accept if that were the case—then I will pursue it in written form. I am more than happy for you to make that judgement, Clerk, because I know that matters of parliamentary privilege are never simple or able to be dealt with quickly at a committee like this. I would be more than happy if you prefer to take that on notice.

Dr Laing: I am happy to take a stab at giving a general answer. The particular issues of parliamentary privilege that might arise depend on the circumstances in any case. As a general matter—and I believe I mentioned this the last time this subject came up a couple of years ago—there are, in relation to CCTV footage, obviously very serious privacy concerns. But there is also the question in Parliament House of the freedom of senators and members to go about their business without improper interference. Any act or conduct, be it actions, words or what have you, is capable of being dealt with as a contempt if it constitutes an improper and interference with the free performance of a member or senator's duties. That is the threshold test for contempt in the Parliamentary Privileges Act, in section 4. So it really depends on the circumstances of the case—what kinds of conduct may well be seen as possibly interfering with that freedom of senators and members to go about their functions.

Senator FAULKNER: Thank you, Clerk. Can you confirm that you have advised me in relation to the parliamentary privilege aspects of hypothetical situations that might apply?

Dr Laing: I have.

Senator FAULKNER: I indicate to the President that I might follow some of these matters up when we deal with the Department of Parliamentary Services. I thank the Clerk and the Black Rod.

Senator SMITH: My questions go to the arrival on 1 July of the new senators and what preparations are being undertaken to give them the necessary induction courses and what that might involve. I am correct in saying that we are expecting six new senators after 1 July?

Dr Laing: I have 12 on my list.

Senator SMITH: Excellent. Perhaps you might like to tell us who the 12 senators-elect are?

Dr Laing: There are three from the Palmer United Party, one from the Motoring Enthusiasts Party, one Family First senator and one Liberal Democrat senator—who does that leave? I can give you a list in writing. I do not think I can rely on my memory.

Senator SMITH: Can you share with us what induction programs will be in place or have been initiated already?

Dr Laing: Yes. The induction for new senators starts after the election. At the time of the opening of parliament, we usually do a pre-orientation session for senators-elect. They are invited to attend the opening of parliament and then they stay on the next day for a day of pre-induction sessions. We have covered some general matters about procedure and the rationale for the Senate. We have covered some logistical things, like setting up an office and where to go to for support.

Once senators' terms begin, we always have a more formal induction session, spreading over two or three days. This year, because 1 July—the beginning of the term—is on a Tuesday and the Senate sits the following Monday, we have taken the decision to split the induction program into two sessions. The first session will be held on the Thursday and Friday of that first week in July, so I think that is 3 and 4 July, and it will consist of training in the things that are absolutely necessary to be across in order to participate in a first sitting in the following fortnight.

Senator FAULKNER: Ms Mills, you may have heard some questions I was asking of the Department of the Senate—and obviously you may not have; I appreciate that. But I was asking about the CCTV code of practice, and I asked the Usher of the Black Rod, who obviously is a member of the security management board, some questions about this, and I just wondered if I could just briefly confirm that there is a security-in-confidence version of the CCTV code of practice and a public version.

Ms Mills: Yes.

Senator FAULKNER: I could not get a copy of the code from the APH website. Is that because I am hopeless at finding it or because it is not there?

Ms Mills: I do not know. I will have to look into that matter. I must say that it is a difficult website to navigate for certain policies, so I cannot be sure. But I will certainly look into that straightaway.

Senator FAULKNER: You can just take that on notice. Neither could anyone else that I asked, but I did get a copy of the code by what is called a google search—which of course I did not undertake myself, as everyone would appreciate! My staff were able to do that for me, which I appreciate. So, I do have a copy of the public version of the code, dated 23 June 2011. And just following up on questions I asked of the Department of the Senate, to the Usher of the Black Rod, there have been no changes since that time—is that correct?

Ms Mills: That is correct.

Senator FAULKNER: I also asked a question in relation to sections in the public version—they may be different in the security-in-confidence version; how would I know? But in the public version the statement of purpose of the code is clause 5, and I asked if in the security-in-confidence version there were any other elements—it is (a) to (j) in the public code—and I was assured that there was not. Can you confirm that?

Ms Mills: That is right, yes.

Senator FAULKNER: Also, in relation to the public code, the key principles—paragraph 6, the principles that apply to the operation of the Parliament House CCTV footage, that is (a) to (k)—I asked whether in the security-in-confidence code there are any other elements, and I was assured that there were not, but you can confirm that.

Ms Mills: That is correct.

Senator FAULKNER: This is described in the code that I gleaned through a google search, which is described as 'Governance Paper No 10.18—Parliament House Closed Circuit Television Code of Practice—Public Version'. It is dated 23 June 2011, which we have established; you can confirm that. It effectively says that it is up for review in this month of this year. Is that still the case?

Ms Mills: That is the date that was scheduled. It is scheduled to be reviewed every three years, yes. No work has yet been done on that.

Senator FAULKNER: So, that review has not commenced?

Ms Mills: Not at this stage, no.

Senator FAULKNER: So, the code is as I have it in this public version. Can you explain to this committee, please: if CCTV footage needed to be accessed by the Department of Parliamentary Services, what are the steps that are followed?

Ms Mills: There are a number of steps that come into the policy that you do not have available to you, which is the criteria for which CCTV might be used—very specific criteria. The department, at a senior level, must make a judgement as to whether those criteria would be met in one or more ways. There are a series of specified criteria as well as a clause that says that if there are other reasons then the permission of the presiding officers must be sought. That is the normal process before which any access to CCTV can be made. Then, depending on the purpose for that access, there are a number of different steps, but it is heavily controlled and it has to be for a very specific purpose.

Senator FAULKNER: Yes, but it has to be in accordance with the purposes and principles of the code?

Ms Mills: That is correct.

Senator FAULKNER: So access to the CCTV footage, in terms of DPS staff, is very limited, isn't it?

Ms Mills: Yes, it is.

Senator FAULKNER: Can you say who it is limited to, please?

Ms Mills: Depending on the circumstances, it is limited to a very small number of people from the security branch, who will do the original accessing of the information, then, depending on the nature and the purpose for

it, it will be restricted only to officers who have an essential need to view that footage, and that will vary according to the situation.

Senator FAULKNER: But they also have to have a security clearance, don't they?

Ms Mills: Under normal circumstances, yes. I am unaware if there are any exceptions to that.

Senator FAULKNER: What do you mean—they are required to—

Ms Mills: Yes, they are required to. As I said there is a variety of reasons why CCTV footage has been accessed over the years. Some of them are not for internal reasons. The decision about whether or not that material can be provided is taken on a case by case basis.

Senator FAULKNER: But when it is taken, who is the final authority in that regard?

Ms Mills: Senior security—unless it is an 'other', in which case it has to go to the presiding officers.

Senator FAULKNER: Presiding officers, yes.

Ms Mills: Senior people within the security branch.

Senator FAULKNER: What level of security clearance do they have to have?

Ms Mills: They would have to have at least a Neg Vet 1 or 2.

Senator FAULKNER: So—

Ms Mills: Senator, I might assist this, because I did see you this morning and I have looked into the matter. It would appear to me from investigations this morning that it is possible DPS has breached the code in investigating a case to do with a staff member. It may not be that issue. I was unaware of the circumstances, but I did view your questions this morning. What I can say is that—in looking very rapidly at that situation—it would appear that in dealing appropriately with what were the guidelines for criteria for viewing footage, that I believe that was done in good faith. I believe that some additional information came forward in the course of the review that led to what appears to be a breach of the principles, which I will look into this afternoon.

Senator FAULKNER: That is not a question I have asked yet, so we might get to some of those issues. Frankly, what you have just said there worries me even more than I have been previously worried, and that is saying something. I want to know whether CCTV footage in this building has been used to monitor DPS staff?

Ms Mills: Not to monitor DPS staff, no. To gather evidence in a potential code of conduct case around an individual, yes. The notion of monitoring staff would infer a broad-brushed approach to following our staff. That is certainly not the case. An incident occurred some months ago where a potential code of conduct breach had occurred, and, reading guidelines 10.18, it was the view of the department's senior legal and security area that a potential access to CCTV to assist in understanding that code of conduct issue was not in conflict and was in fact supported by the policy.

Senator FAULKNER: Wait a minute. What you have offered up to this committee this morning, not in answer to a question from me, is that you have said that CCTV footage has been used in relation to a staff member of DPS, and you said, 'contrary to the principles and purposes of the guidelines'. That is either right or it is wrong.

Ms Mills: No, what I said was that the footage was approved to be accessed, consistent with the guidelines. It is regrettable to find in the process of doing that an aspect of its use appears to have breached the guidelines. There are two separate issues here. I believe, in my interpretation, that the department was within its rights to access the footage. In continuing that dialog, an assessment that I have been able to make only this morning, it would appear that as a by-product of accessing that footage some breach of the principles may have occurred.

Senator FAULKNER: You have only just found that out this morning?

Ms Mills: Yes.

Senator FAULKNER: Because I asked questions of the Department of the Senate?

Ms Mills: Yes.

Senator FAULKNER: But not about that matter.

Ms Mills: You asked a number of questions. I always prepare when I watch you—as there may be issues where we might have that follow on. You did make reference on a couple of occasions that you would ask similar questions of the Department of Parliamentary Services.

Senator FAULKNER: Yes, but I was talking about the use of CCTV footage. You are now saying that CCTV footage has been inappropriately used by the Department of Parliamentary Services in some form—I do not know and I do not intend to ask, because I do not intend to breach the privacy of an individual or individuals,

who are either employees or former employees—I do not know their status—of DPS. But this is a very serious problem. We now hear that DPS has not acted in accordance with its own code of practice.

Ms Mills: Having seen your questions this morning, I asked to be reassured that all members were acting in accordance with the current policy, and that there had been no changes to the policy. These are questions you asked this morning—

Senator FAULKNER: Yes.

Ms Mills: And I wished to have that verified. I also asked if there had been any situations where we had used CCTV that might be relevant to my investigation, and I found in that preliminary advice that we have used it once recently and, in that activity, may have inadvertently breached that. I am being up-front with the committee that we may have made an error, and I am being up-front with the committee that I am confident it was an isolated issue, and I am being up-front with the committee that no-one would have willingly, or deliberately, breached any of these things, but it appears it may have happened, and I will look into it later today.

Senator FAULKNER: Well, I will look into it now. How often has CCTV footage been used in relation to staff matters, disciplinary or otherwise?

Ms Mills: I cannot answer. I would have to take that on notice. I am aware myself of one instance, the one I have just spoken of.

Senator FAULKNER: You have spoken about one. I want to know if there are other instances. This is very serious.

Ms Mills: There are none to my knowledge.

Senator FAULKNER: So you can assure me there are no other instances?

Ms Mills: I can assure you that there are none to my knowledge, but I would have to look back over the records to see if there had been other instances.

Senator FAULKNER: Who is monitoring this?

Ms Mills: The senior part of our security area.

Senator FAULKNER: Can we get them to the table right now.

Mr Skill: I am the first assistant secretary of the Building and Asset Division.

Senator FAULKNER: Mr Skill, you have heard my question. I am trying to establish at this stage how widespread the practice is, contrary to DPS's own code of practice, and the purposes and principles of that code of practice, and how many cases there are of CCTV footage being used in relation to staff matters. Ms Mills has told us she is aware of one case. I am now asking you how many other cases there are.

Mr Skill: To my knowledge, there is only the one case, although it would have been approved at the branch-head level and not necessarily the division-head level, which is the level I am at. We will be watching this now and I am sure we will have some information for you shortly, if there were any other cases. But it is a very rare occurrence. As Ms Mills said there is only one that we are aware of.

Senator FAULKNER: But it is not approved at your level?

Mr Skill: No, it is approved at the SES band 1 level.

Senator WONG: But this is the very senior people we are discussing, isn't it?

Mr Skill: Yes, the assistant secretary of the security branch.

Senator FAULKNER: Well, is that person available to inform the committee what the situation is?

Mr Skill: No, senator, that officer has departed the Parliamentary Service. He is no longer a public servant.

Senator FAULKNER: That's handy!

Senator WONG: When did that happen?

Mr Skill: He departed about a week and a half ago.

Senator FAULKNER: Is the security management board informed when CCTV footage is used in these circumstances?

Mr Skill: Not to my knowledge. I will review the previous SMB reports, but to my knowledge they are not informed.

Senator FAULKNER: How can this happen when the DPS code of practice, its purposes and principles, does not allow such behaviour to occur?

Ms Mills: As I said, there was an incident involving a senior manager of staff—I will not go into the details of that—

Senator FAULKNER: I do not want you to go into the details. What I am concerned about is the one incident—and I will not go into details; of course we never do at this committee. I am concerned at the moment about establishing whether it is one incident or more than one incident, and I have received no answer that gives me any confidence in that regard at this stage.

Ms Mills: We have no reason to suggest there is more than one incident. There are none that have been brought to our attention; there may have been historically. There is one, and one only, that we are aware of. I have been upfront about admitting that and upfront in suggesting that, whilst I believe the material was accessed originally in accordance with the policy and the operating guidelines, in the access of that material and its use it would appear on preliminary advice that we may have breached the principles.

Senator FAULKNER: I do not accept the evidence that there are not other cases; nevertheless, we will hear about that in the future. In relation to the one matter—obviously without identifying the person who was subject to this surveillance—how was the request to access for that CCTV footage made?

Mr Skill: The request came from the HR area of the department to the assistant secretary of the security branch requesting still footage and/or CCTV footage of a nine-minute period in relation to an officer.

Senator FAULKNER: And the authorisation of that access to use—it is footage and images, is it?

Mr Skill: That was released. It is basically the footage and then you can extract images from the footage.

Senator FAULKNER: Still images?

Mr Skill: Correct.

Senator FAULKNER: Of course, the code goes into a process in relation to the extraction of still images, doesn't it?

Mr Skill: Yes, it does.

Senator FAULKNER: Could you explain what the code requires you to do in relation to the extraction of still images.

Mr Skill: Still images—again, I am not sure whether this is from the security-in-confidence version—

Senator FAULKNER: The public version is fine. I do not expect you to quote from a security-in-confidence document.

Mr Skill: Images can only be requested where they are required for the investigation of an incident, a possible crime or administration of security at Parliament House. All still images remain the property of DPS. Printed copies of still images will display the date of printing. The release of printed still images to PSS or AFP perimeter guarding employees, for intelligence purposes only, can be approved by the director of security or the assistant secretary building services—and that has been superseded by the assistant secretary security branch.

Senator FAULKNER: Were those requirements adhered to?

Mr Skill: That is part of the investigation. We are looking into that now.

Senator FAULKNER: What investigation?

Mr Skill: The one that Ms Mills indicated we are doing this afternoon.

Senator FAULKNER: Oh, the one that just started as a result of me asking questions today?

Mr Skill: Correct.

Senator FAULKNER: But not these questions, other questions?

Mr Skill: Yes, Senator.

Senator FAULKNER: I want an assurance from you, Ms Mills, that at no stage has CCTV footage been used to in way impede, affect or have any impact at all on the work of either members of the House of Representatives or senators in this building.

Ms Mills: It is my belief that DPS endeavours at all times to accord with that. I believe that we operate in a very difficult and challenging environment. We are dealing with staff matters. This is the one and only case that I am aware of where there may not have been best practice in that regard, where we had an inadvertent conflict between staff management issues and the protocol of the protection of members' and senators' rights to do business in the building. I will have more information about that soon, but I want to assure you that we well understand the purpose and the significance of the protection of the rights of members and senators and that we

are also aware that on occasion in dealing with, as a normal department would, the behaviour of its staff and code of conduct it is possible in this particular situation that those two things have come inadvertently into conflict.

Senator FAULKNER: Is that a yes? Are you saying it has impacted on a member or a senator?

Ms Mills: You are asking me to make a blanket comment on what is not a blanket situation. The department understands the principles, understands the guidelines and believes, in acting on a code of conduct matter against a staff member, that it had followed the principles and guidelines appropriately. It would appear in the course of that action, following access of the CCTV footage, another issue may have occurred which is in conflict with the principles, which we are now investigating.

Senator FAULKNER: But I want to know whether any of this activity, outside DPS's own code of practice and the purposes and principles of that CCTV footage, impacts on the free performance of a senator or of a member of the House of Representatives in the conduct of that senator or member's duties. That is what I want to know.

Ms Mills: I do not believe that has ever occurred; I do not believe that that occurred in this instance; I believe that we understand that. What I am suggesting is that, to verify that and to make sure that there can be no ambiguity, I am looking into the matter. As I said, it is a difficult environment; we appreciate that; it is a complex work environment. At times the department's management staff make decisions that we would make if we were any department in the Commonwealth, or parliamentary services, and we conduct that in an appropriate way. In this particular case, the only one I am aware of, and therefore the only one I can speak about today, there may have been some inadvertent conflict between staff management issues and the principles of the free use of everything in the building for members and senators. But it is not a report I have seen; it is something that I have looked into today and will investigate further.

Senator FAULKNER: Why are you saying there might be? You must have reason to say there might be.

Ms Mills: I have reason to say that there might be because, on the basis of your questions this morning, I asked if we had any current situation where we had used the CCTV code of practice rules and whether there was any circumstance in which we had any concerns about any matter other than regarding a staff member. As I say, I can absolutely assure you that we do not use CCTV or anything else with disrespect to the rights of members and senators. We have never used it, and never would use it, for that purpose.

Senator FAULKNER: I used to believe that. In fact, Senator Ronaldson and I have asked a lot of questions at this committee over quite a number of years, and I have always accepted the assurances given at the table in regard to these matters. But, let me assure you, I no longer accept them. Given that we are at a Senate estimates hearing, are you concerned that there is a senator involved in this—

Ms Mills: I make no reference to who might be involved; I am suggesting—

Senator FAULKNER: But I am asking whether a senator is involved—whether a senator has been spied on.

Ms Mills: No-one is being spied on.

Senator FAULKNER: Is a senator or a senator's office involved in this surveillance?

Ms Mills: An individual staff member of the Department of Parliamentary Services was involved in the surveillance. The only reason that permission was given was because of a potential code of conduct breach by a staff member of the department. We are within our rights to do that.

Senator FAULKNER: No, you are not within your rights to do that at all. It is not allowed for under the code of practice.

Ms Mills: As I said earlier in making the decision to release the footage, I am aware, although the person is no longer here, that they took due consideration of OPP No. 10.18.

Senator FAULKNER: Which part?

Ms Mills: The private part, which I can show you later.

Senator FAULKNER: But you told me there is no difference in the statement of purpose and key principles between the private part, which was described as security-in-confidence, and the public part. It is not in the public part.

Ms Mills: What I said is in the private section are the specific criteria under which permission may be granted, and they were the criteria used to assess this. I am confident in saying that at no point in the approval given by the former assistant secretary to release this footage was there any belief that it would have anything to do with either a senator or a member. It was made in good faith that it was about the behaviour of an individual within DPS's own office space.

Senator FAULKNER: Where does it say you can do it with a staff member? Which clause in this public document, governance paper 10.18, Parliament House Closed Circuit Television Code of Practice, is used? The terms of the statement of purpose say that the CCTV system is intended to provide surveillance to areas in and around parliamentary precincts as established by the Parliamentary Precincts Act, and that subject to this code of practice the CCTV system is only to be used for the following purposes. Then we have (a) to (j). Which purpose was used?

Ms Mills: I will take that on notice because I was not part of the approval process.

Senator FAULKNER: Let us get someone to the table, then, who can answer. This is critical.

Ms Mills: As I said, regrettably that person has resigned from the department. I am not able to ask him his motivation. I can only say that both papers—10.18 the public version and 10.18 the private version—would have been accessed and taken seriously into account before making a decision.

Senator WONG: I am not sure how you can say that.

Senator FAULKNER: No, I am asking you which statement of purpose was used.

Ms Mills: I am saying I believe the person was very professional, I believe they would have taken it seriously.

Senator FAULKNER: I don't—

Ms Mills: I am sorry, I was answering Senator Wong's comment.

CHAIR: Can there be one question, and then we will allow the witness to provide an answer and then there can be subsequent questions. It makes it very difficult if people are asking things at cross purposes.

Senator WONG: I am sorry. You answered a question from Senator Faulkner about whether there was a senator involved. At some point are you going to at least clarify the circumstances in which the footage was taken and used?

Ms Mills: I am very happy to do that, but it is a code of conduct which is currently underway. There is only one case, so anything I say in detail would relate—

Senator FAULKNER: Is there only one case?

Ms Mills: I am aware of only one case. If there are more cases, then bring them forward and I will look into those as well.

Senator FAULKNER: I do not know. You are the person who can tell us.

Ms Mills: I have said there is only one case. You are saying there is not. I have no evidence that there is more than one case.

Senator FAULKNER: Ms Mills, you are the person who has raised the issue of this case, not me.

Ms Mills: I have put it on the table in good faith to demonstrate that the department would never deliberately breach a policy, and that, in acting appropriately, in making an approval process consistent with the policy, information, as I understand it, came to light during this investigation which may then have led to a breach of the principles, which I am looking into. There are no other cases; there is no endemic issue with this.

Senator WONG: Ms Mills, I do not understand how you can say 'there is no other case' so categorically when it is only as a result of questions in this estimates committee this morning that you even became aware of the case we are discussing. The reality is that is not an assurance you can give.

Ms Mills: I accept that, yes. I guess I simply want to make the point that I have confidence in the professionalism of the staff and that they would have exercised appropriate steps in making the decisions.

Senator FAULKNER: I would like to know, given the statements of purposes, which are the same in the security-in-confidence version of the code of conduct as they are in the public version, which clause is used in relation to this. You have told us about a staff disciplinary matter. I cannot see any clause that can be used in the statement of purpose for this code. Staff disciplinary matter, or code of conduct matter as you describe it, is not there; it is not contained within that at all. So how could this happen? It is only to be used for the purposes outlined in the code.

Ms Mills: The advice I have is that the interpretation related to clause (e)—potential for civil proceedings.

Senator FAULKNER: What are the key principles of the interpretation, and whose interpretation was that?

Ms Mills: The authorising officer was the assistant secretary responsible for security. I cannot go through the thoughts that he had about that, but I am telling you it is my understanding that that is the clause that was used to determine whether it was appropriate, on one specific matter, regarding one specific potential code of conduct by

an employee of the Department of Parliamentary Services, to access nine minutes of film or photos of that person's behaviour as part of a code of conduct process.

Senator FAULKNER: And you are saying to this committee that you are only aware of CCTV camera footage or stills being used in one code of conduct case? Is that what you are seriously saying to us?

Mr Skill: That is correct. There is one case which is not related to code of conduct—we are defending claims that are being made by an employee as to the conduct of our security officers. We are accessing that information.

Senator FAULKNER: That is a second case. How is that described? It is not code of conduct, it is not disciplinary—what is it?

Mr Skill: It is clause (i), which is to identify and investigate incidents or accidents that could result in a compensation or insurance claim against the Commonwealth. Claims have been made by an ex-employee as to the conduct of our officers.

Senator FAULKNER: So in relation to staff disciplinary or code of conduct issues, you are maintaining there is only one case that you are aware of where CCTV footage has been used?

Mr Skill: That is correct, to the best of my knowledge.

Senator FAULKNER: I come back to the question I asked before about the functions and performance of parliamentarians in the course of their duties and responsibilities. I want to now ask why you made the comment you did before about the possibility that at least one parliamentarian—is it one parliamentarian or more than one?—may have been affected in the performance of their duties, and that this has just come to your attention.

Ms Mills: What came to my attention this morning was that, as I saw you ask a number of questions about the policy, you asked a number of questions of the Department of the Senate and intimated that you would also ask similar questions of the Department of Parliamentary Services. I, therefore, in preparation, went to reassure myself that the answers that had been given to you by the Usher of the Black Rod were correct—that, in fact, we had not varied at all from the policy and we had not yet scheduled a change. I also asked if there had been any use of the policy in recent times around any decision and I was at that time advised that it had been used on this occasion for this one incident to do with the code of conduct for a staff member. I then asked for further information about that, which led me to come forward and say to you that, in making those inquiries, I feel there may have been an inadvertent and ancillary breach of the statement of purpose in undertaking what was an appropriately constituted approval to look at a code of conduct issue under category (e) of the policy.

Senator FAULKNER: Why do you say there may have been?

Ms Mills: Because the information that was provided to me suggested that some of the CCTV footage may have captured that person doing other activities in the building besides the one for which the CCTV footage was released.

Senator FAULKNER: What does that mean?

Ms Mills: Because the matter is still under investigation, I would prefer not to provide details at this time. However, I am happy to provide you details in private discussion.

Senator FAULKNER: All right. Does it involve me? Does it involve people providing information to me?

Ms Mills: It may do.

Senator FAULKNER: It may do? Does it involve a person or people—an individual or individuals—providing information to me as I go about my work as a senator in this parliament?

Ms Mills: That is what I am looking into. That is the issue that was brought to my attention today, and I am looking into it.

Senator FAULKNER: This is a serious issue of parliamentary privilege. I will stop my questioning on this matter at that point, and I flag with the chair and the President, as you would understand, Mr President, that I will be taking this matter forward as a matter of privilege immediately. This is the most serious breach. I am sure every senator around this table understands what has just been said. It is a serious breach that a senator in this parliament is being spied on in that way as they go about the proper conduct of their duties. No-one in this place is ever going to accept that. It is not proper for me to proceed with this now. Obviously, I have to raise it as a matter of privilege, but I hope you, Mr President, understand the significance of what we have just heard.

Senator XENOPHON: Further to Senator Faulkner's line of questioning, in respect of the public version of the governance paper, the code of conduct, you can use this material in respect of providing evidence upon which to take criminal and civil proceedings—correct?

Ms Mills: Yes.

Senator XENOPHON: So that would include under sections 70 and 79 of the Crimes Act, which are the whistleblower provisions of that legislation—correct?

Ms Mills: That is potentially true, yes.

Senator XENOPHON: That is right. So, further to Senator Faulkner's line of questioning, that means that, if a member of the DPS has concerns about the conduct of the DPS and goes to a member of parliament, because it covers sections 70 and 79, it means that you can establish which members of your department have gone to see a member of parliament with concerns about the running of the department?

Ms Mills: We could potentially do that. This case did not relate to that. As I said, it was—

Senator XENOPHON: But potentially you can do that, can't you?

Ms Mills: I would have to take legal advice under the new PID Act because there have been changes to the whistleblowers act from July. But, as I said earlier, this is an issue where there turned out to be an unintended conflict between a staff management issue and the rights of members and senators.

CHAIR: Senator Xenophon and Ms Mills, I am going to interrupt here because there has been a request for the committee to hold a brief private meeting. In accordance with that request, I am going to suspend.

Senator FAULKNER: Could I just say something before you do that, Chair? I support what the committee would want to do in these exceptional circumstances. I do want to point out to committee members—not the witnesses—that this is a matter that, as I said, Senator Ronaldson and myself have asked questions about previously. There was an article in *The Age* newspaper on Monday, 12 December 2011. I will quote it:

Departmental insiders also allege that in-house security cameras at the Federal Parliament House were used to try to identify whistle-blowers allegedly leaking information to Labor Senator John Faulkner, who is driving an inquiry into parliamentary administration.

I refer my colleagues to the questions at the subsequent estimates hearing around that. I want to say to the committee members that I absolutely accepted all the assurances that witnesses at the table gave me at that time.

CHAIR: Thank you, Senator Faulkner. The committee will enter into a brief suspension and we will meet in the anteroom. Witnesses, could you remain? We will resume as soon as is applicable.

Proceedings suspended from 12:01 to 12:07

CHAIR: I will reconvene this meeting of the Finance and Public Administration Legislation Committee. For the benefit of the estimates hearing, the committee has resolved to seek some advice from the Clerk about a particular matter which Senator Faulkner was discussing prior to the break. Pending that advice, we may return to that matter at another time. In the interim, we are going to move to another matter of security, I believe. I will give Senator Heffernan the call.

Senator HEFFERNAN: Through you, Mr Chairman, could I seek some guidance on the cameras that are behind us and can read the documents on the table?

CHAIR: We will ask the cameras to please move behind the main desk. Thank you.

Senator HEFFERNAN: I think they should be out of line of sight of the paperwork.

CHAIR: They are all right. We will be able to monitor them.

Senator HEFFERNAN: I want to ask some questions on the budget for DPS and the changes to the security arrangements in recent days which were proposed before Christmas and were put on hold and then reinstated. My understanding is that there are certain classes of people who can now enter the building. We have had a discussion about this, and you have been most helpful in those discussions. I realise it is a serious budgetary issue. It has changed to where certain classes of pass holders can pass through, as ably demonstrated today, with whatever they like. And I understand further that there are certain people who cannot, and I understand further that there can be random checks, and I understand further that this new program can be put on hold at short notice, and I am asking you to give consideration to putting it on hold at short notice today.

To start with, the security arrangements for the building: the AFP this morning told me that they have not finished negotiating with DPS. I have had a discussion with the security intelligence organisations. They are happy with their plight. The AFP are not happy with their plight. Can you tell me where we are up to with the security arrangements on the perimeter, first response and the likelihood of preventing this building, which is the most symbolic building in Australia, as the White House is in America, from becoming what we know as a 'dirty building', so that in the event of an international visitor—the President of the United States or someone—coming here there would have to be a thorough clean-out of the building? Can you tell me where we are up to in those terms, with the advice you have received from the AFP and Australian security?

Senator WONG: Hang on. In the MoPS agreement it makes it very clear that security assessments—this is non-ministerial staff, so we are not talking about what is required of ministers and their staff or senators and members—are at the discretion of senators and members. When you made this assessment—for example, and we will come back to this—did you actually check how many pass holders actually have formal police or security clearance?

Mr Skill: Not of the members and senators' staff. No, we did not.

Senator WONG: You have just told me that part of the reason that there was a low-risk assessment was that people had security clearances, but you have now just told me that you did not actually check how many had.

Mr Skill: What I said was that the staff of members and senators were included on the basis that the member or senator was vouching for those staff or they were trusted people within the office. The other pass holders—for example, photographic Commonwealth office holders or the staff of parliamentary departments—have all had a police records check, at the very least. The vast majority hold a higher level of clearance by virtue of their seniority.

Senator WONG: Do you know how many people are pass holders?

Mr Skill: I do. I do not have that statistic with me.

Senator WONG: Let's explore this after lunch, because I will yield to Senator Xenophon. I would like to understand precisely how many people are pass holders and your process for issuing passes. I will be clear with you: a number of us have had changes of staff over the time we have been here and I do not recall anyone from DPS rocking up and saying, 'Hey, you have got to give your pass back.' How many inactive passes or passes that belong to people who are no longer employed here still subsist?

Mr Skill: I will see if I can find that detail for you.

Senator WONG: Do you track that?

Mr Skill: There is a process in place where people who leave that employment or leave the building have their pass suspended or terminated. So let me get the detail on that.

Senator WONG: Process? What is that process? Turning up and just asking them to give it back?

Ms Mills: We receive regular advice from the Department of Finance if there is changes to pass—

Senator WONG: Hang on, that is different point. I am asking this: when someone ends their employment, I want to know what you do in terms of the pass. You are putting all of this emphasis onto pass holders. I have to say, and other senators may have a different experience, that my experience has been that that has not been the most stringently policed method of regulation. But I am happy to yield to Senator Xenophon.

Senator XENOPHON: This was covered in large part by Senator Wong. It seems that Laurie Oakes and Michelle Grattan are deemed a higher security risk than others in the building—than Senator Heffernan, for instance! There seems to be no rhyme or reason in this. You seem to have created a different class of people in this building, some of whom have been here for 20, 30 or more years. I do not get it and I agree with Senator Heffernan that you have now opened this building up to all sorts of security vulnerabilities. On Senator Wong's line of questioning, in relation to the media, I would like to know who are the experts that gave advice in respect of this. Could you please tell us the qualifications and the process that you went through to determine the risk assessment?

Ms Mills: We can certainly provide that detail after lunch.

Senator HEFFERNAN: There was a person who was a tradie in the building and he was allowed access. He had a criminal record around guns. I wonder how he got in? You can tell us after lunch.

CHAIR: Take that on notice. The committee will now suspend for lunch and resume at 1.30.

Proceedings suspended from 12:30 to 13:34

Senator FAULKNER: Could you please inform me of the current staffing establishment for Hansard?

Ms Mills: As at 31 March—the most recent data I have in front of me—Hansard has 57 personnel employed, the equivalent of 42 FTE, of whom 27 work full time, 12 work part time and 18 are sessional. Fifteen of the editors are still in their traineeship phase.

Senator FAULKNER: In the past 12 months how many editors have left Hansard?

Ms Mills: Nine staff left Hansard between 1 July and 31 March, a turnover rate of 9.9 per cent, which is less than the department's overall turnover rate of 11.9 per cent. Of those nine staff, four editors retired, two editors

resigned to take up academic roles, two editors transferred to the APS and one took a position with the New South Wales parliament.

Senator FAULKNER: Does that add up? How many did you say? It does not add up.

Ms Mills: It adds up to nine. Four editors retired, two editors moved to take up academic roles elsewhere, two moved to the APS and one editor moved to the New South Wales parliament.

Senator FAULKNER: And one other?

Ms Mills: There were nine staff.

Senator FAULKNER: How many staff in Hansard in the same period have been, or are, subject to disciplinary or code of conduct actions?

Ms Mills: I do not have that in front of me. I can check that for you and come back to that.

Senator FAULKNER: All right, I would appreciate that. Would I be right in suggesting that a lot of experience has been lost as a result of the departures we have been speaking of—or is it, as you have been suggesting, basically standard operating procedure?

Ms Mills: If you look at where people went, there are a number of factors. Half of the nine—four—actually retired. I think this is one of the features of our parliamentary staff in general. We have a large number of people across the Department of Parliamentary Services who are towards the end of their careers, so we do have probably a higher rate of retirement than some other agencies. And the other staff have taken new roles elsewhere. I am pleased to say, however, that the calibre of people being recruited is very high. We have had a high level of interest in, and a high number of applications for, the new roles; and, I am advised, we have a very highly skilled potential team being built.

Senator FAULKNER: But is there a staff shortage in Hansard at the moment?

Ms Mills: Given that we have a higher number of trainees than usual, there are probably more people training than is desirable. But we have not made any reduction to the Hansard numbers by any sort of strategy, and we are delivering on time and at the usual quality.

Senator FAULKNER: As I read the answers to questions on notice 3 and 4, we have got 15 trainee editors among the—

Ms Mills: Fifty-seven editors.

Senator FAULKNER: It is 15 out of 57?

Ms Mills: Yes.

Senator FAULKNER: Is that a very high proportion of staff at the level of trainee?

Ms Mills: I would have to take advice on that.

Senator FAULKNER: Why are there so many trainee editors?

Ms Mills: With nine people leaving, and also because of the changing nature of parliament, we have a philosophy of increasing the percentage of, in particular, sessional and part-time staff as part of our commitment to providing a flexible service. We recruit a large number of trainees and train them up so that they can work sessional, so it is not unusual for there to be a number of people being trained at once. But I do not have in front of me the record of how that has been over the last several years.

Senator FAULKNER: According to a question on notice 3, there are 60 staff in Hansard, with 42 permanent editors. Of those permanent editors, 31 are full time, eight are part time, three are sessional and there are seven permanent trainee editors. I am interested in that category of 'permanent trainee editors'. How can you be a permanent trainee editor—or can you be a permanent trainee editor? According to your own categories, you can.

Ms Mills: The definition is those who have come in to work not as sessional but on a full-time basis on an ongoing basis.

Senator FAULKNER: Say that again.

Ms Mills: That category covers people who have been employed to work full time or on an ongoing basis. Sessional staff are employed for approximately six months of the year and they are available when the parliament is busiest. But we also maintain a corps of around just over half the total quota of staff, who are employed full-time, so that we have the ability to deliver services throughout the year.

Senator FAULKNER: But has there been a change in the way Hansard is operating during this current period, because of staff shortages, compared to other Senate estimates periods?

Ms Mills: Not to my knowledge. Each time an editor position becomes vacant, Hansard management has assessed the needs and the available resources and made decisions about recruitment. It is true to say that we have had an extremely difficult budget for the last couple of years in particular and we have had to make serious decisions about the number of staff. But each case is brought forward and the Hansard management team make a decision about whether they can continue to operate with the number of resources they have or whether they seek additional resources, and each of those cases is being looked at very carefully.

Senator FAULKNER: So there will be subediting in the House of Representatives chamber over this sitting fortnight?

Ms Mills: As I understand it, it has been the practice for many years that, when estimates is on and one of the chambers is sitting, we do often rely on additional contract staff and we do sometimes have to vary the timetable. That is nothing new. I have been advised that has been the practice for many, many years.

Senator FAULKNER: So what is the status in relation to subediting for the Reps over this sitting fortnight?

Ms Mills: I will ask Karen Greening, the assistant secretary for that area, to provide the detail.

Ms Greening: Depending on the workload that we have at any particular point in time, decisions are made as to whether we subedit the transcripts as they are produced on the day or hold over the subediting to a non-sitting period. Estimates is traditionally a very busy period for Hansard, so sometimes we make the decision—and it has been made this time round—that we will not subedit, or do as much subediting, of the chamber transcripts until a non-sitting period.

Senator FAULKNER: That is this time round. That means it has not applied previously, I assume.

Ms Greening: No, it does apply. I cannot tell you exactly when it has applied, but it is a regular occurrence. It depends very much on how many staff we have in the workplace; it also depends on the number of hours of transcription work that we have to do. We make a decision on whether or not we will subedit based on the number of hours of transcription work and the number of staff that we have in the workplace. We also try to keep the length of day as short as possible for our staff. We ask them to work a 7½ hour day when parliament is sitting; there are some days when we ask them to work a lot of overtime. If we were wanting everything to be subedited, it would mean asking people to work more overtime. We actively try to avoid asking them to do that.

Senator FAULKNER: How many Hansard editors are currently suspended from their duties?

Ms Greening: We currently do not have any Hansard editors suspended from their duties.

Senator FAULKNER: How many have been suspended from their duties in this calendar year?

Ms Greening: Three.

Senator FAULKNER: What is the status of the three who were suspended?

Ms Greening: They are no longer parliamentary employees.

Senator FAULKNER: They are no longer parliamentary reporters?

Ms Greening: No, they are no longer in the parliamentary service.

Senator FAULKNER: We know that three editors have been suspended from Hansard this calendar year. Can you provide any update in relation to any other Hansard employees, or is it just the three editors?

Ms Greening: I am not sure what you are asking, Senator.

Senator FAULKNER: Three editors have been suspended this calendar year and no longer work for the Department of Parliamentary Services. Are there any other categories of employee who have worked in Hansard who have the same status?

Ms Greening: No.

Senator FAULKNER: Ms Mills, before the break you indicated you had established some facts in relation to the use of CCTV footage. Are you able now to provide further information to the committee on that point? You said you were going to check this out, so what have you been able to establish?

Ms Mills: A draft code of conduct report—I have not viewed that report—following interviews with a staff member indicated that there was access to CCTV footage following an interview with that person to verify their statement. It would appear in that act that a potential breach of the guidelines occurred.

Senator FAULKNER: Have you read this draft code of conduct report?

Ms Mills: No, I have not.

Senator FAULKNER: Is that available?

Ms Mills: I understand there is a report but I have not read it. I was not aware that it was at this state until today, and during the lunch break, given other questions, I did not have an opportunity to look at it.

Senator FAULKNER: Sure, but there is a draft code of conduct report?

Ms Mills: Yes.

Senator FAULKNER: Can that be brought to the table, please. I want quoted from the report just the paragraphs that relate to a senator's office or a senator—in this case, me. I will give someone some time to get that. I am not interested in names, ranks or serial numbers—I am interested only in the paragraphs of that report that relate to, in this instance, as a result of the evidence you gave earlier, me. I appreciate that might take a little time.

CHAIR: While that is happening, we will go to another senator for questions.

Senator RHIANNON: Were the Speaker or the Liberal Party charged a fee for the use of the Speaker's rooms for the Liberal Party fundraiser held during the budget?

Ms Mills: DPS has no direct involvement in that type of role. The House of Representatives would support the Speaker in any event she might have there. Our role is quite tangential, so I really could not answer that with any confidence.

Senator RHIANNON: I keep on getting bounced from one place to another in trying to understand this, so I will continue to ask a couple of questions to see if some issues come under you. What was the value of the gift in kind that parliament effectively made to the Liberal Party for the free use of the Speaker's rooms?

Ms Mills: Again, I am sorry, I cannot assist you with that question.

Senator RHIANNON: Is that because you do not know what the value of hiring out the Speaker's rooms are?

Ms Mills: The Speaker's rooms are not generally in our lettable area. We have very defined areas of the building that are let through IHG. The special suites all have dining room capacity, and it is normally up to the Speaker, the President or other holders of special suites to decide how they wish to use them. They get support for that, if it is the President or the Speaker, from their respective chamber departments.

Senator RHIANNON: So would you agree that this is a gift in kind considering they rented—

Ms Mills: I cannot make that comment. As I say, they are offices allocated to the respective holders of those positions. I am not aware of any rule that prohibits them using them for the purposes that they see most appropriate.

Senator RHIANNON: No, I am not talking now about prohibiting their use. I am just trying to see if the rules have been followed. With regard to disclosure, the AEC does require donors to put in forms that cover gifts in kind, so that is where I thought it would come under your responsibility.

Ms Mills: We would not be involved in that side of it at all. We are really more the infrastructure provider and facility provider rather than the manager of the sorts of issues you have just spoken about.

Senator RHIANNON: So you are saying the Department of the House of Representatives would be responsible for that?

Ms Mills: It depends on the circumstance. I am not familiar with the circumstance.

Senator RHIANNON: I am speaking of the specific examples of using rooms in here for fundraisers. If rent is not paid on them, that is a donation in kind that needs to be reported, so I am trying to understand who should take responsibility for that and if it has happened.

Ms Mills: The chamber departments would be able to provide you with a lot more information about how that operates. There are, as I said, lettable areas in the building, and there are categories of functions in the building that members and senators apply for and suggest whether it is a parliamentary or non-parliamentary event. We really work with IHG on the facilities and the catering rather than on the purpose behind any particular event.

Senator RHIANNON: Do you keep a list of what the purpose is when events are held here?

Ms Mills: No we do not.

Senator RHIANNON: Does somebody?

Ms Mills: If the Intercontinental Hotel Group, which are our caterers, are catering for an event, they would know about what the event was, the location and the number of people for whom they were catering; but, again, that is perhaps not the same as the question you are alluding to. In addition, we would only have that information if they were using IHG. In the special suites, the President, the Speaker and the Prime Minister may choose whichever catering company they wish.

Ms Mills: Yes.

Senator WONG: It is bipartisan committee across the parliament?

Ms Mills: Yes, it is the office holder.

Senator WONG: I had some questions about a dining set that is on display currently. Is it the Queen's dining set?

Ms Mills: Yes, we have a set called the Queen's dining set.

Senator WONG: Who can answer questions about the usage of that?

Ms Mills: I can answer general questions. If it is very specific I could perhaps offer more.

Senator WONG: Who is able to use it?

Ms Mills: My understanding is that it is available to the presiding officers and the Prime Minister, on a loan basis, for events.

Senator WONG: I think on the little art descriptor it says that it is only used on rare occasions, such as a formal parliamentary function or state visit. Is that correct?

Ms Mills: It is a very valuable set of crockery. It has been with the parliament for a long time and, yes, it is used for special occasions.

Senator WONG: But it is available to the presiding officers?

Ms Mills: Yes.

Senator WONG: Do you know if it was made available to the Speaker for the function we have been describing?

Ms Mills: Given that I am gathering information on that I will find that out for you.

Senator WONG: Does anyone here know. This is a different issue, because this is owned by the—

Ms Mills: I appreciate that. I will have to check that with some staff.

Senator WONG: Is it available for party political fundraisers?

Ms Mills: I would have to find the criteria, but I believe the criteria would be that it is for use by those people at their request, rather than specifying the purpose.

Senator WONG: So it could be used for a party political fundraiser by the Prime Minister or one of the presiding officers? Just to safeguard the President's reputation, he made it clear this morning that he has not used his suite for party political fundraisers.

The President: I have never used it.

Senator WONG: The crockery set?

The President: I have never used it and never requested it.

CHAIR: But you have had private functions in your suite, Senator Hogg.

The President: I am talking about the crockery.

Senator WONG: If the President or the Prime Minister wants to use the crockery set who do they talk to?

Ms Mills: It is normally stored in our Art Services branch, in the arts store, because of its value. But again—I am hypothecating here because I will have to get the answer—normally whoever is organising the event would contact us and arrange to have it delivered.

Senator WONG: Whilst you are dealing with Senator Faulkner, can we come back to this and have at the table the person from the art collection who deals with this?

Ms Mills: Certainly.

Senator WONG: Will you be able to arrange that?

Ms Mills: Somebody is taking care of that now.

CHAIR: Whilst we get to Senator Faulkner's issue I would just like to recognise and acknowledge the presence of members of a parliamentary delegation from Malaysia, who have chosen to join us. You are most welcome.

Honourable senators: Hear hear!

CHAIR: Ms Mills, you were going to respond to Senator Faulkner.

Ms Mills: Yes, my staff have just provided a copy of the report—

Senator FAULKNER: Thank you. First, I want to make clear, Chair, that I am not interested in any names being used. I am only interested in the issue of—how will I best describe it—the use of CCTV footage and the collection of evidence. I am not interested in any other elements of this, which, I do not know, may go to personal privacy and other matters. Having made that point absolutely clear, can I start by seeking a reassurance, as I was given earlier today, about the fact that on only one occasion has CCTV footage been used in a staff disciplinary or code of conduct matter? That is what I was assured and I just want to be reassured.

Ms Mills: I said that to my knowledge that was the case. I have confirmed that there have been additional cases and I have asked for—

Senator FAULKNER: I am sorry. You have confirmed what?

Ms Mills: I have confirmed in the lunch break that there were some additional cases. Before lunch Neil Skill referenced one or two, and we are confirming if there are any—but what it did say—

Senator FAULKNER: So we are clear on this, the earlier evidence in relation to the use of CCTV footage for a staff disciplinary or code of conduct matter being limited to one case was not right. It is more than one case. We have established that now.

Mr Skill: No, that is not correct. There is only one code of conduct related case. One is the case I mentioned this morning in relation to alleged inappropriate conduct by our guards. The third, which I found out about this morning after our session finished, is related to a fraud incident. So there is a code of conduct and there is a fraud related issue, as well.

Senator FAULKNER: It is the terminology used by DPS. Whether that is fair terminology I am in no position to judge. Anyway, we will come to that in future hearings, I suspect. I want to go to the issue that related to identification, effectively, of a senator. I am not interested in any names or identifying factors being read into the *Hansard*. I am only interested here in matters that go to the use of CCTV footage and possibly, if you like, the collection of evidence about the issue we were discussing. I wanted that sentence or paragraph, if it is a paragraph, quoted, or, sentences and paragraphs quoted, so that I precisely understand what the detail of that issue are. I repeat that I am not interested in any identifying factors at all. I am only interested in the issue of collecting information or evidence via CCTV footage and how it applies. That should limit it down and means that no privacy issues are involved. Can you assist me with that? Is it a report or a draft report? I think you used the terminology 'draft report'.

Ms Mills: As I said to you, I was unaware of that until this morning. I have not yet read it. This is the first time I have actually seen it. As I understand it, it is a draft investigation report.

Senator FAULKNER: Alright, draft investigation report. If you or another witness would like a little more time to identify those paragraphs, sentences, enumerations, subsections or however the report appears, I am only interested in the ones I have asked. Given the need to protect privacy, I am happy to leave this a little while if someone wants to be absolutely doubly sure and check. Otherwise, we can do it now. In other words, if you need another 10 or 15 minutes to check—

Ms Mills: I think that would be beneficial. If there are ongoing questions, I am happy to keep answering them.

Senator FAULKNER: I am happy with that. Then we can come back to that before DPS leaves. I think that would assist.

CHAIR: It would.

Senator FAULKNER: I am happy to ask some other questions, of course.

CHAIR: There are plenty of questions.

Senator FAULKNER: I am also happy to stay in the queue.

CHAIR: Always mindful of the time. Senator Madigan, did you have an issue you wanted to raise?

Senator MADIGAN: In relation to the request for the tender for the provision of manufacturing the Australian flag on this building, there is a plethora of conditions that are placed on the tenderers in the document. I want to establish whether all the conditions in the tender document are applicable if you are an Australian manufacturer or a foreign manufacturer. Do you have exemptions for foreign manufacturers under the tenure document?

Ms Mills: As I believe I answered at the last estimates, we are not able to dictate, under the fair trade agreement which the government is party to and under Commonwealth guidelines, the source of things that we tender for.

Ms Mills: Again, going back to some of the dialogue we have had previously—I am not sure that you were here—although 120 places is the normal sitting area for the Members' Guests Dining Room, in fact the central kitchen provides from the same source and the same set of crockery the Members' Guests Dining Room, the members and guests club, the Sir Richard Baker Room, the Sir Frederick Holder Room and the cabinet room. At the moment, we use up to 375 settings in those areas and they are all sourced from the same kitchen, the same preparation areas, the same washing areas. It is quite difficult to do that as a full set. The other issue for us is that there is a variation in the setting contents of what you have generously offered and what we presently have. We currently have 11 different items that comprise a setting. Your donation does not have an equivalent number of items. For example, we currently have two sizes of dinner plates, we have a specific entree plate, we have a specific side plate and dessert bowl, which are not matched in terms of what you have provided. So for IHG to provide a three-course meal equivalent, there simply is not enough crockery in the donation, which is why we are looking at other uses for it.

Senator MADIGAN: It obviously seems very difficult for you, Ms Mills. This is what you are telling us. If it is all too difficult and it is going to be sitting in a skip bin somewhere, how would Senator Xenophon and I go about getting the crockery back from DPS and, say, auctioning it off or donating it to a charity? It just seems all too difficult, doesn't it?

Ms Mills: Senator, I want to reassure you that it was with goodwill that we accepted it and we are genuinely looking for ways to use it. It is just not suitable for the purpose you would have preferred. We are certainly very happy to provide it back to you if there is a good use to which it could be made sooner than a use we might be able to find for it in Parliament House.

Senator FAULKNER: Senators do not have 11 different types of crockery in their own individual suites. I assume members do not have 11 different types of crockery, do they?

Ms Mills: No.

Senator FAULKNER: So why wouldn't that be an option?

Ms Mills: As I think Ms Hanley said, that is one of the possibilities. The timing is slightly awkward in the sense that, because of the changeover of parliament, crockery sets were replenished in all of the private areas, but nonetheless that may be something that senators wish to consider. We would be happy to assist in distribution of that, but what I am suggesting is that their preferred use, which was in the Members' Guests Dining Room, is just not practical for us.

Senator FAULKNER: Is that distribution done by the chamber department?

Ms Mills: It is done in the House of Representatives by the chamber department. It is a mixed model in other parts.

Senator FAULKNER: What about senators' offices, then?

Ms Mills: The Department of the Senate. Sorry, I had that around the wrong way. We assist the House of Representatives and the Department of the Senate does it itself.

Senator FAULKNER: There is obviously some possibility there given it is considerably smaller, and it would appear, perhaps, there is more flexibility. Anyway, I will leave that to those who know more about—

Ms Mills: As I said, I am very happy to have discussions with the senators about their gift, if we can look at other ways to use it or if they wish to auction it or something else.

Senator MADIGAN: Could you take on notice, Ms Mills: could you inform the committee how much money has DPS spent on crockery, re-equipping members' rooms or the Prime Minister's room or whatever—a total? How much money you have spent? And where was the crockery sourced from?

Ms Mills: Yes, I can take that on notice.

CHAIR: Ms Mills, how are we going with the matter of that report that Senator Faulkner is so interested in?

Ms Mills: I have a copy in front of me that has marked paragraphs that may be relevant from Senator Faulkner's perspective. I am happy to go to that now.

Senator FAULKNER: Could you just explain to us what you are going to read into the record, please? You are not going to mention any names? There is going to be no breach of privacy?

Ms Mills: No. I am sorry, Senator: do you want me to read the entire report into the record?

Senator FAULKNER: No. I just asked, in relation to the collection of evidence and CCTV footage issues or collection of information in the case that has been described as a code of conduct issue that might mention a senator, is there is a sentence or are there sentences, or a paragraph or paragraphs, or a numbered clause or

numbered clauses, which could be read in, which is only a very small part of the document? One assumes we are talking about a small part of the document. I did not want, at all, that document to be read into the record; just any element that related to the CCTV footage and collecting information and evidence in that case. I want privacy to be protected. I am interested in only the use of CCTV footage in that regard.

Ms Mills: Again, because Ms Teece has actually gone through the document, I will get her to read them, if that is okay.

Senator FAULKNER: Yes. One assumes it is not much.

Ms Mills: There would appear to be a couple of paragraphs.

Senator FAULKNER: I am assuming it is something like that. How many pages does your document have?

Ms Teece: There are a number of pages and they are not numbered, but there are about five paragraphs.

Senator FAULKNER: I appreciate that. I am really trying to focus on small, relevant information so I can fully understand the nature of the evidence that Ms Mills provided earlier today. Obviously, it is critically important, not only for senators but also, I accept, for witnesses at the table—to protect the privacy of any individuals involved in the matter.

Ms Mills: Before Ms Teece reads it—because we have had a long break since this came up—again, could I place some context around it. There was an allegation about the behaviour of a staff member. A staff member was identified through security records as having attended the building in unusual hours. They were asked for their reason for being in the building. They gave a particular rationale. That was looked at on CCTV. It did not accord with the advice that person gave. A second interview was conducted. They gave new advice, and that is the basis, really, of what Ms Teece—

Senator FAULKNER: Just so we are absolutely clear: there is absolutely no capacity under the purposes and principles of the CCTV code to look at such material—none; absolutely no authority. There is no way it could ever be authorised, and it is a massive, massive breach of proper process. Having said that, let's hear the paragraphs.

Ms Teece: In response to the allegation, the person that is subject to the code said:

I also had some personal business with the senator and left documents at the senator's office. Should you wish to confirm this by contacting the senator, please advise and I will seek approval from the senator to provide their name.

In relation to the section under consideration of the available evidence: 'She contends that the reasons for her attendance at this time were to both drop off work related papers to her normal work location and to conduct some personal business with the senator.'

Senator FAULKNER: What I have been trying to do here is clearly—I mean, I may as well be speaking Swahili. I am interested only in the elements that I have outlined.

Ms Teece: Yes.

Senator FAULKNER: In other words, that relate to the parliamentarian. In this case it appears to be me.

Ms Teece: It just says to conduct some personal business with the senator.

Senator FAULKNER: Okay. I think you just used the term 'collection of evidence'—that is what I am interested in, the use of CCTV footage. I must have said this six times.

CHAIR: You have been very clear, Senator Faulkner.

Ms Teece: Consideration of available evidence:

The photos and security camera footage reveal that—

'whoever'—

did not attempt to enter her normal work location, which was the other stated intention of her attendance. The relevance of the photos is that they demonstrate there was no need for access to the areas of Parliament House that she did if the sole purpose of her trip was ultimately to deposit material which could only relate to personal business under the door of suite 42 on the outer corridor.

Senator FAULKNER: Who occupies suite 42 on the outer corridor?

Ms Teece: Senator, I—

Senator FAULKNER: You do not know?

Ms Teece: No, I—

Senator FAULKNER: I do. I occupy it. Go on.

Ms Teece: Evaluation of the evidence.

Senator FAULKNER: What are the subheadings of this document, please?

Ms Teece: The subheadings are: introduction, the alleged breach of the DPS Code of Conduct, investigation procedure, evidence collected—

Senator FAULKNER: Okay, and others.

Ms Teece: Response to the allegation, consideration of the available evidence, evaluation of the evidence and summary of findings.

Senator FAULKNER: All I would ask to be read into the record is relevant paragraphs of what is called 'evidence collected'. Any names or identifiers completely removed. I have limited this to the use of CCTV footage and evidence collected.

Ms Teece: Under evidence collected, would you like me to just read out that portion or—

Senator FAULKNER: No, I only want to know if there are any relevant sentences or paragraphs in relation to what we now have identified as suite 42. Well, that is me. Is suite 42 mentioned in evidence?

Ms Teece: Yes, Senator.

Senator FAULKNER: How many times, please?

Ms Teece: Once. It says: 'The route taken after entering through Senate security checkpoint was determined as being on the Senate side of the parliament as follows.' Then it goes through a number of dot points and then: 'place an envelope under the door of suite 42 on the Senate side of Parliament House'.

Senator XENOPHON: Why should you have access to this?

Senator FAULKNER: Before we go to that—you can confirm that is the only place that is mentioned in evidence collected? You just told us that.

Ms Teece: Yes, that is correct.

Senator FAULKNER: Just that occasion.

Ms Teece: That is correct.

Senator FAULKNER: Just repeat those words, please: place an envelope—

Ms Teece: 'Place an envelope under the door of suite 42 on the Senate side of Parliament House.'

Senator FAULKNER: In broad terms, again with no identifiers, where does the evidence collected issue go beyond that in terms of this report?

Obviously this committee can get this report if it wishes to. There are issues for the committee. I do not want to engage in that, because I have deliberately absented myself from the private discussions—you would acknowledge that Chair?

CHAIR: Indeed, Senator Faulkner—

Senator FAULKNER: I have absented myself from any private discussions of the committee, because, clearly, it is now established that I am a first party here—I might have mentioned, an aggrieved party. What else is involved, apart from placing an envelope under the door of my office? Anything else?

Ms Teece: In that section, no. Then I mentioned the two responses to the allegation.

Senator FAULKNER: All right. If that is all. Is that what you were referring to earlier, Ms Mills?

Ms Mills: Yes. As I said, I had not seen the report until it was brought here this afternoon. But I was informed that a draft report around a code of conduct matter may have related to a number of questions you were asking earlier today.

Senator FAULKNER: I of course have received advice in relation to parliamentary privilege from the Clerk of the Senate in relation to this matter. Has DPS sought any advice in relation to the privilege of parliamentarians?

Ms Mills: I spoke to the Clerk of the Senate this morning when I became aware of this issue. I sought her advice on the circumstances as I knew them at that time.

Senator FAULKNER: But not before?

Ms Mills: I am not aware of the department doing anything previously. I can only speak about what I did this morning when I heard about the issue. I went straight to seek the technical advice of the Clerk.

Senator FAULKNER: What did the Clerk say to you?

Ms Mills: The Clerk indicated to me that on face value it would be a breach of the guidelines, albeit potentially inadvertent. The outcome would technically be potentially a breach.

Senator FAULKNER: There is no question it is a breach of the guidelines. The principles—

Ms Mills: Well, the principles, yes.

Senator FAULKNER: There is no question about that. Did you address the issue of privilege with the Clerk?

Ms Mills: Yes, specifically. Sorry, I used the word 'principles' but I should used the word 'privilege'.

Senator FAULKNER: What did the Clerk say about the issue of privilege?

Ms Mills: I went to her this morning and said that I had become aware of an issue and these were the circumstances of it and I sought her advice about whether it was likely to be a breach of privilege. She said that on the advice available to her that was likely.

Senator FAULKNER: And there are two other instances where CCTV footage has been used. Obviously the circumstances in individual cases are different. Everyone would acknowledge that. As far as you know, in those other two cases neither the offices occupied by a member of the House of Representatives or a senator nor the actions of a member of the House of Representatives or a senator are involved. Is that correct? That is what I understand is the case and I am just checking that.

Ms Mills: That is the advice I have received.

Senator FAULKNER: The Clerk's advice to me includes this statement:

The use of electronic surveillance of a senator's office for unauthorised purposes to intimidate persons who provide information to senators is also capable of being found to be a contempt ...

I could read a whole range of areas from the Clerk's advice, which I might make public. I am careful here, as you would appreciate, because I have absented myself from the private meetings of this committee. I am not clear on what action, if any, the committee has taken. We all seek advices from the Clerk. It is a straightforward course of action. I might be in a position to make that advice public. I have made it absolutely clear how seriously I treat these concerns.

CHAIR: Thank you, Senator Faulkner. I think it is fair to say we have had a pretty good exploration of this issue for the moment. What the committee determines will be determined by the committee—

Senator FAULKNER: Now let me ask this, Chair—

CHAIR: Before you continue, Senator Faulkner, there are some other questions relating to security matters. I do want to wrap this up very quickly.

Senator FAULKNER: I am always happy to cede the call.

CHAIR: Senator Heffernan, you have two questions.

Senator HEFFERNAN: Is the \$400,000 estimated saving, of kinds, over the security arrangements per annum or in the forward estimates?

Ms Mills: Per annum.

Senator HEFFERNAN: Could you provide on notice to the committee the cost of clearing the building. Under the present arrangements, as we have discussed, any MP can more or less bring anything into the building. Correct?

Ms Mills: Yes.

Senator HEFFERNAN: That has never been tested, which is interesting. Under the current arrangements, probably anyone with a pass can bring anything into the building—

Ms Mills: If I may, as you know there are only certain categories and there are random checks. There are a number of checks and balances in place.

Senator HEFFERNAN: Yes, all of the above. But in terms of a clearance for a visit by someone important, such as the US president, I would have thought that within a month or two this building would have been well and truly declared a dirty building. Could you give an estimate to the committee of the cost of clearing the building back to clean status?

Ms Mills: I can certainly provide—

Senator HEFFERNAN: I will bet you it is more than \$400,000.

Ms Mills: I am thinking of the most recent occasion when we had President Obama here. There would have been a standard clearing, and we can have a look at that as a case.

Senator HEFFERNAN: Do you have a rough idea what that was?

Ms Mills: I am sorry, I do not.



PARLIAMENT OF AUSTRALIA • THE SENATE

SENATOR JOHN FAULKNER
 Labor Senator for New South Wales

Senator the Hon John Hogg
 President of the Senate
 Suite SG 40
 Parliament House
 Canberra ACT 2600



Dear Mr President

As foreshadowed at Monday's estimates hearing of the Finance and Public Administration Legislation Committee. I write to raise a matter of privilege under standing order 81.

Evidence given to the Finance and Public Administration Legislation Committee on Monday 26 May 2014 by officers of the Department of Parliamentary Services, including evidence volunteered by the Secretary, Ms Mills, confirmed that closed circuit television footage of a DPS staff member leaving an envelope under my door was used in the course of disciplinary proceedings against the staff member. Not only was this a serious breach of the code of practice for the use of CCTV footage but, from my perspective, it represents an unacceptable interference with the ability of senators to carry out their functions as senators and, in that sense, constitutes an improper interference with senators.

Over the years, I have received unsolicited information from many sources which has assisted me to carry out my duties as a senator. I imagine that many other senators are also in this position. The value and credibility of inquiries by Senate committees, including legislation committees considering estimates, has been enhanced over many years by the capacity of senators to raise matters as a consequence of information provided to them. Accountability rests on such foundations.

If the provision of information to senators is monitored by electronic surveillance, then neither senators nor people who provide information to them can have any confidence in the security of their transactions. Improper use of electronic surveillance compromises the free performance by a senator of his duties as a senator and therefore represents, in my view, a very serious contempt.

You will recall that I raised this issue over two years ago when reports appeared in *The Age* newspaper of 12 December 2011 that in-house security cameras were used to identify whistle blowers allegedly providing information to me at the time of the previous inquiry into the performance of DPS. At the time, I was given assurances by DPS officers that there was

no substance to the report. Evidence given to the Finance and Public Administration Legislation Committee on Monday 26 May 2014 flatly contradicts and undermines those assurances.

I therefore raise with you the following matters of privilege in respect of the free performance by senators of their duties as senators, and the protection of people who provide information to senators:

- (a) whether, in the use of CCTV footage by officers of DPS to investigate staff conduct or other internal matters, there was any improper interference, or attempted improper interference with the free performance by me or any other senator of our duties as senators;
- (b) whether disciplinary action was taken by DPS against any person in connection with the provision of information to me or any other senator; and
- (c) if so, whether any contempts were committed in respect of those matters.

I ask that you consider these matters and grant precedence to a notice of motion referring them to the Committee of Privileges.

Yours sincerely



Senator the Hon John Faulkner
Senator for New South Wales

28

May 2014



AUSTRALIAN SENATE

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26 May 2014

Senator the Hon John Faulkner
Suite S1 42
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Faulkner

USE OF THE CCTV SYSTEM IN PARLIAMENT HOUSE – ISSUES OF PARLIAMENTARY PRIVILEGE

You have asked for advice about the extent to which a set of circumstances gives rise to issues of parliamentary privilege or otherwise affects the rights and freedoms of senators working in Parliament House. The circumstances do not raise any issue of comity between the Houses.

The circumstances you have asked me to consider involve the taking of disciplinary action against a parliamentary service employee for an alleged breach of the code of conduct where the evidence relied on consists almost exclusively of CCTV footage, including footage of the employee slipping an envelope under your office door. The alleged breach of the code of conduct, however, does not involve provision of information to you but the employee's alleged dealings with another employee. The context includes that you have received unsolicited information from parliamentary service employees in the past in connection with relevant inquiries by Senate committees, including estimates.

Policy on the use of CCTV information

Before addressing possible issues of privilege, the first question that arises is whether the use of CCTV footage is authorised for this purpose. Expansion of the CCTV system throughout the building occurred in 2004 as part of a suite of security measures responding to a revised security assessment of Parliament House in the wake of heightened concerns world-wide about terrorist attacks. The purposes of the CCTV system are specified in a code of practice, the public version of which can be found on the internet (copy attached) – although it is not published on the current Parliament House website, contrary to the accountability undertaking in paragraph 7. Paragraph 5 of the code lists the *only* purposes for which CCTV is to be used while paragraph 6 enumerates the key principles applying to the operation of the system. Although the key principles recognise the privacy and civil liberties of Senators, Members and

other building occupants, the policy fails to acknowledge the unique characteristics of a parliament, the law of parliamentary privilege and any relevant resolutions of the Houses.

The permitted uses of CCTV information include for public order and security purposes, investigation of criminal offences, provision of evidence for criminal and civil proceedings, management of security services, emergency responses, and compensation and insurance purposes. Although paragraph 5(j) gives the Presiding Officers the discretion to authorise "any other purpose", the uses that are specified do not refer to monitoring of parliamentary service employees for disciplinary purposes outside the permitted uses, let alone monitoring of senators' offices and persons who provide information to senators.

Nothing about the character of the permitted uses suggests that these additional purposes could be authorised by the policy. The policy is silent on the monitoring of members of parliament going about their normal business. In a parliamentary environment where each house has ultimate control of its own affairs, it is inconceivable that the use of CCTV information to identify persons providing information to senators or members could ever have been sanctioned as a permissible use of CCTV information when the system was first installed, given the inherent threat such monitoring would pose to members' and senators' freedom to go about their business without obstruction. Similarly, the monitoring of staff to find evidence of conduct other than conduct targeted by the policy was beyond contemplation when the code of practice was devised and, to my knowledge, has not subsequently been included.

The code of practice includes strict record-keeping and access controls. Records must be kept of all persons, items and incidents monitored (paragraph 19). Access to the footage is restricted to specified uses and release of images is subject to approval, including by the Usher of the Black Rod and Serjeant at Arms if images depict senators or members (paragraph 20 - 29). Presiding Officer approval is required for releases to a member of the public or for insurance or compensation purposes (paragraphs 22, 29).

There are restrictions on the making of still images from the footage and any such saved images are required to be recorded in a register (paragraphs 30 - 32). All printed copies of images are to be destroyed at the end of 31 days (paragraph 35). Still images may only be requested "where they are required for the investigation of an incident, a possible crime or administration of security at Parliament House" (paragraph 31). Printed copies of saved images must display the date of printing (paragraph 33).

None of the permitted actions or uses refer to the conduct of internal disciplinary proceedings by parliamentary departments (although an assumption is required that the proper investigation of breaches of the code may involve access to parts of the system). It is the responsibility of the Assistant Secretary Building Services to appoint persons to conduct such investigations. Paragraphs 43 and 44 of the code provide:

- 43 Any use of the CCTV system or materials produced which is frivolous, or for private purposes, or is otherwise inconsistent with the objectives and procedures outlined within this Code is not permitted and will be considered misconduct.

- 44 Any DPS or AFP-UP staff member involved in incidents of this type will face investigation and appropriate disciplinary action in accordance with the relevant departmental policies.

It is not clear from the circumstances on what basis the use of CCTV information has been authorised, or whether the correct process for access and use has been followed. Indeed, it is not clear how the code could authorise use of CCTV footage in the identified circumstances under *any* circumstances unless a security incident were involved or an incident otherwise permitted by the policy to be monitored.

The identified circumstances reveal that parliamentary employees have used the CCTV system to obtain information about persons providing information to senators. It is irrelevant that the information obtained and used may have been incidental to the investigation of an alleged code of conduct breach. Disciplinary action has been taken against an employee on the basis of CCTV information that also shows the employee providing information to your office. The latter forms part of the evidence in the disciplinary action.

If the taking of disciplinary action is in this sense indistinguishable from the provision of information to the senator, then there is a reasonably strong possibility that a contempt of the Senate may have been committed by the initiation and conduct of disciplinary proceedings against the employee and by the unauthorised surveillance of your office. At the very least, the use of the CCTV system to conduct surveillance on a senator's office and to identify persons providing information to that office could be seen as an attempt to deter the senator from pursuing matters of public importance by restricting the flow of information to the senator. It could also be seen as a betrayal of trust by officers misusing CCTV information in this way, and eligible for disciplinary action under the code of practice, not to mention the code of conduct under the *Parliamentary Service Act 1999*. Contempt and disciplinary actions are not mutually exclusive and there is no rule against double jeopardy when it comes to parliamentary privilege (see *Odgers Australian Senate Practice*, 13th edition, page 86).

Parliamentary privilege

There are at least two issues of parliamentary privilege raised by the set of circumstances.

The first is the protection of persons who provide information to senators. The second is interference with the free performance by a senator of the senator's duties as a senator.

– protection of persons providing information to senators

The first issue, though very serious, is not the principal focus of this advice, although supplementary advice can be provided on this point if you require. There is no absolute privilege attaching to persons who provide information to members of parliament. However, privilege may attach if it can be established that the provision of information was for purposes of, or incidental to, proceedings in Parliament within the meaning of section 16 of the *Parliamentary Privileges Act 1987*. This is a question of statutory interpretation and application of the statute to the circumstances of the case.

A separate question is whether – regardless of whether the provision of information is covered by absolute privilege – the Senate might nonetheless treat the imposition of a penalty on a person who provides information to a senator as a contempt, as it did in the Rowley, O'Chee and Armstrong case which is the subject of the [67th Report](#) of the Committee of Privileges. By adopting the report, the Senate made a finding of contempt against Mr Michael Rowley for taking legal action against Mr David Armstrong, an informant of Senator O'Chee's. No penalty was imposed in this case as the Committee considered it inappropriate to recommend a penalty against a person who, having taken legal advice, regarded himself as exercising his legal rights.

It is a matter of great concern if people who provide information to senators about their grievances or allegations of malfeasance are deterred from doing so because of punitive action taken against them. I draw to your attention a paper by Harry Evans on "[Protection of Persons who Provide Information to Members](#)", prepared for a Presiding Officers' and Clerks' Conference and published in Papers on Parliament No. 52 (December 2009)

- *interference with the free performance by a senator of the senator's duties as a senator*

The other issue of parliamentary privilege is the question of interference with the free performance by a senator of the senator's duties as a senator.

At its most basic, parliamentary privilege is a functional immunity. It provides houses, committees and members of parliament with immunity from the ordinary law to the extent required for them to carry out their functions without impediment or interference. Once the existence of a privilege is established at law, it is exclusively a matter for the house concerned to determine the manner of its exercise or application.

While not every "privilege" equates to a corresponding contempt, in Commonwealth law, contempt is assessed by reference to a statutory test in section 4 of the Parliamentary Privileges Act:

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

Any conduct, including use of words, may constitute an offence if it satisfies this test. [Privilege Resolution 6](#) sets out a number of matters which the Senate has determined may constitute contempt but the list is not exhaustive. The resolution begins with the following explanation:

Without derogating from its power to determine that particular acts constitute contempts, the Senate declares, as a matter of general guidance, that breaches of the following prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

The list includes as its first item:

Interference with the Senate

- (1) A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a senator of the senator's duties as a senator. (emphasis added)

In times past, such an offence was more likely to consist of the physical obstruction of a member of parliament (for example the arrest and detention of a member) but it is a broad expression of a basic principle; namely, that members of parliament are entitled to go about their business as members and to freely perform their functions as members without improper interference. It is a pre-requisite for an effective parliamentary system.

It will be observed that both section 4 of the Act and Privilege Resolution 6(1) refer to the concept of "improper interference". "Improper" in this context does not mean "unlawful" or malicious or improper in some other context. It does not necessarily involve culpable intention. It refers to interference that has the tendency or effect of preventing the legislature or its members carrying out their functions.

The Senate has always exercised its contempt powers with great circumspection. Its most intense efforts have been directed to the protection of witnesses before its committees. In cases involving possible improper obstruction of senators, it has generally taken a robust view – usually because of the capacity of senators to protect themselves, including through their access to privileged proceedings. Cases involving improper obstruction or interference with senators include:

- alleged harassment of Senator Lt-Col John Neild (1904) by Major-General Hutton who recommended that Senator Neild be placed on the retired list of the military forces partly because of speeches he made in the Senate, and who attempted to interfere with Senator Neild in the discharge of his duties as a senator (no contempt found);
- attempts by representatives of the adult entertainment industry to influence members of the opposition and of a select committee ([43rd Report](#)) (no contempt found);
- possible threat by a property developer (Port Hinchinbrook) to sue a senator ([53rd Report](#)) (no contempt found);
- possible threat to a senator from lawyers representing a client who was the subject of a contempt finding against an informant of the senator (the Rowley and O'Chee matter) ([67th Report](#)) (no contempt found).

A 1994 case in the House of Representatives involved the question of whether general industrial action which interrupted the flow of mail to and from members' offices constituted a contempt. Disruption was widespread and significant but, as the industrial action was not specifically targeted at members, no contempt was found.

Another category of cases involved members of both Houses who were subject to search warrants executed by members of police forces. No contempt was found in any of these cases.

A case in the [ACT Legislative Assembly](#) in 2001-2 involved the diversion of emails from a member's office to an unauthorised recipient in the office of another member of a different political party. The diversion occurred because of careless work by the Assembly's IT provider and continued for some time with the knowledge of the unauthorised recipient. The Assembly's Select Committee on Privilege considered that the diversion of the member's emails could readily constitute an improper and serious interference with his ability to carry out his functions as a member of the Legislative Assembly, and concluded that the unauthorised recipient was in contempt. Failure to rectify a clearly erroneous email diversion and use of information in the emails was a serious and intentional improper interference with the member's ability to carry out his functions.

There is nothing in the precedents that is exactly comparable with the identified circumstances. Perhaps the most useful analogy is the Wilson doctrine that applies in the United Kingdom House of Commons. It is described in *Erskine May* (24th edition, 2011) in the following terms:

In 1966 the then Prime Minister said that he had given instructions that there was to be no official tapping of telephones of Members of the House of Commons (known as the Wilson Doctrine). In exceptional circumstances the House would be informed. The doctrine has been several times restated by the Prime Minister and most recently, in a case involving a Member, by the Home Secretary. The Committee on Standards and Privileges has concluded that in certain circumstances 'phone hacking', which it defined as 'gaining of unauthorised direct access to a remotely stored mobile telephone communication', in respect of Members' mobile phones could potentially constitute a contempt. (p. 264)

In my view, the circumstances do give rise to concerns that a contempt of interference, or attempted interference, with the free performance by a senator of the senator's duties as a senator may have been committed. Disciplinary action against a person that has the tendency or effect of hampering the provision of information to senators could readily constitute an improper interference with the free performance of a senator's duties as a senator and, therefore, a contempt. The use of electronic surveillance of a senator's office for unauthorised purposes to intimidate persons who provide information to senators is also capable of being found to be a contempt.

There are well-established criteria for assessing such matters.

The report of the ACT case referred to above contains a useful summary, based on the practices of the Commonwealth Houses, of the requirements necessary to constitute the contempt of improper interference:

- (i) *improper interference* in the free performance by a member of his or her duties as a member;

- (ii) *serious interference* with a member's ability to perform his or her duties as a member;
- (iii) an *intention* by the person responsible for the action to improperly interfere with the free performance by a member of his or her duties as a member; and
- (iv) *that the interference related to the member's duties as a member* of the Assembly not to any other area of responsibility or activity.

These requirements need to be read together with the Senate's criteria to be taken into account when determining matters relating to contempt, which are contained in Privilege Resolution 3:

The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt:
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.

Applying these criteria to the identified circumstances, disciplinary action has been taken against a person for an alleged breach of the code of conduct. The evidence mainly consists of information and images from the CCTV system that showed the person placing an envelope under your door, among other things. Use of the CCTV information for an unauthorised purpose that involves possible obstruction and improper interference with the free performance by a senator of the senator's duties as a senator is a very serious matter. That the source of the possible obstruction and improper interference is an electronic surveillance system operated by parliamentary employees for public order and security purposes is particularly unacceptable. Action in this case to stop the abuse and ensure the correct application of the CCTV code of practice in the future would be necessary to provide reasonable protection to you to carry out your functions as a senator.

The next issue is whether there is any remedy, aside from invoking the contempt power, for dealing with the conduct. In the first instance, you may wish to use existing avenues to explore

the facts of the matter. These include estimates hearings and the capacity of legislation committees to inquire into the performance of agencies. However, there is a strong case for proposing a Privileges Committee inquiry, not least because such an inquiry is conducted with heightened regard to the rights of witnesses and may be a more satisfactory way of establishing the facts of the matter.

The most difficult aspect of any contempt inquiry is usually the establishment of culpable intention. The Privileges Committee has on occasion expressed reluctance to make findings of contempt in the absence of culpable intention even though a culpable intention is not necessarily required by the terms of section 4 of the Parliamentary Privileges Act. Ultimately, however, it is for the Senate to determine what this means in the context of its contempt jurisdiction. In appropriate circumstances, it may be that reckless ignorance or indifference on the part of officials whose job it is to serve the Parliament is a sufficient indicator of culpable intention for the purpose of establishing whether conduct represents improper interference and may therefore constitute a contempt.

Please let me know if I can provide any further assistance. In particular, I can advise you about the process for raising a matter of privilege should you require.

Yours sincerely

(Rosemary Laing)