

The Senate

Committee of Privileges

The use of CCTV material in Parliament
House

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Chapter 1

The use of CCTV material at Parliament House

The matter of privilege

1.1 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 each raised essentially the same matter of privilege, concerning the use of the closed circuit television (CCTV) system in Parliament House. The President made a statement to the Senate on 17 June 2014 indicating that matter should have precedence in debate. He tabled the two letters and attachments, comprising relevant extracts of the transcript of the estimates hearing and advice from the Clerk of the Senate tabled by Senator Faulkner at that hearing.¹

1.2 On 18 June 2014, on the joint motion of Senators Bernardi and Faulkner, the matter was referred to the committee for inquiry and report in the following terms:

In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services (DPS) 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.

1.3 Senator Faulkner did not participate in the consideration of the matter by the Privileges Committee.

Background

1.4 In February 2014, CCTV images showing a DPS employee placing an envelope under the door of Senator Faulkner's office at Parliament House were used by DPS in the investigation of a staff management issue.²

1.5 Senator Faulkner raised the matter during estimates hearings on 26 May 2014. His questions focussed on two concerns:

- that the use of the CCTV system to investigate an internal staffing matter is a breach of the CCTV Code of Practice

1 *Senate Debates*, 17 June 2014, p. 3013 The President's statement, the two letters and their attachments are reproduced at Appendix A.

2 DPS provided the committee a copy of the draft investigation report with its submission.

- that DPS was improperly monitoring interactions between its employees and his office.

1.6 The evidence provided by the DPS Secretary at the hearing was equivocal. She told the committee the matter had only come to her attention during the hearing, but that “it is possible DPS has breached the code in investigating a case to do with a staff member”,³ which she explained as “an inadvertent conflict between staff management issues and the protocol of the protection of members’ and senators’ rights to do business in the building”.⁴

1.7 The Secretary stated that “the footage was approved to be accessed, consistent with the guidelines”⁵ but “there may have been an inadvertent and ancillary breach of the statement of purpose” because the CCTV footage “may have captured [the employee] doing other activities in the building besides the one for which the CCTV footage was released”.⁶

1.8 After being told that the breach referred to by the Secretary “may involve” the use of footage of a person or people providing information to him, Senator Faulkner signalled his intention to raise the matter with the President as a matter of privilege. He expressed the view that “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.”⁷

The matters before the committee

1.9 Against this background, two matters were referred for the committee’s attention:

- (a) whether this use of CCTV images might *improperly interfere* with the free performance of any senators’ duties; and
- (b) whether *disciplinary action* was taken against a person for providing information to a senator.

1.10 The chief concern raised by both Senator Faulkner and Senator Bernardi in their letters to the President is that the use of the CCTV system in these circumstances might deter people from providing information to senators.

1.11 Senator Bernardi noted:

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 Committee and has, over many years, pursued issues of parliamentary administration through estimates

3 FPA transcript, 26 May 2014, p. 23.

4 FPA transcript, 26 May 2014, p. 25.

5 FPA transcript, 26 May 2014, p. 23.

6 FPA transcript, 26 May 2014, p. 28.

7 FPA transcript, 26 May 2014, p. 28.

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.⁸

1.12 In Senator Faulkner's words:

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 numerous 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.⁹

1.13 The possibility that disciplinary action might have been taken against the employee in connection with her provision of information to a senator was raised as an additional concern. Senator Bernardi noted that testimony to the estimates hearing on this element was inconclusive.¹⁰

Role of the committee

1.14 The role of the committee is primarily inquisitorial. When the Senate refers a matter giving rise to allegations of contempt, it is the committee's role to establish the facts. Over the course of an inquiry, particular allegations or suspects may emerge. These are tested to establish what happened. The final step in the process is to consider whether any particular act may constitute a contempt.

1.15 Pursuant to section 4 of the *Parliamentary Privileges Act 1987*, any conduct may constitute an offence against a House (that is, a contempt) if it "amounts to, 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."

1.16 In considering matters involving allegations of contempt, the committee is guided by the Senate's Privilege Resolutions.¹¹ Resolution 6 declares that breaches of certain prohibitions – and attempts or conspiracies to do the prohibited acts – may be

8 Senator Bernardi, Letter, 27 May 2014, p. 2.

9 Senator Faulkner, Letter, 28 May 2014, p. 1.

10 Senator Bernardi, Letter, 28 May 2014, p. 2.

11 Resolutions of the Senate, adopted on 25 February 1988.

treated by the Senate as contempts. The terms of reference for the inquiry draw upon the language of Resolution 6(1), concerning interference with the Senate and senators; and Resolution 6(11), concerning penalties against witnesses.

1.17 The committee is also required to have regard to the criteria specified in Privilege Resolution 3, which focus on an assessment of what action may be 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.”

Improper interference with senators’ duties as a possible contempt

1.18 Privilege Resolution 6, which sets out a non-exhaustive list of matters that the Senate may treat as contempts, starts with the contempt of interference with the Senate or with a senator:

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.

1.19 It is well-established that “improper” in this context does not mean “unlawful” or “unauthorised”, it refers to conduct which has the effect or tendency or tendency of obstructing the Senate or senators carrying out their functions.

1.20 The Senate has generally taken “a robust view as to whether senators have been improperly obstructed”, particularly in relation to conduct involving intimidation, force or threat.¹² Today, interference is as likely to arise from the use of electronic information systems as from, for instance, physical interference or the threat of legal action. In her advice to Senator Faulkner, tabled during the estimates hearing, the Clerk of the Senate cited matters in other jurisdictions involving the diversion of emails and tapping of members’ telephones where contempt findings were considered appropriate.¹³ The action that senators may take individually to resist these less overt forms of interference should they arise is limited. In such circumstances the committee considers that greater recourse to protection through the Senate’s contempt jurisdiction may be warranted.

1.21 The committee’s task here is to determine whether the use of the CCTV system identified in this matter is likely to have the effect or tendency of obstructing senators in their duties as senators. The Privileges Committee has previously stated:

...it is vital for the proper functioning of a house of parliament that information is produced to the maximum extent possible to enable proper decision making. Any obstruction to the free flow of information may be

12 See 125th report, paragraphs 4.27–4.29.

13 Clerk of the Senate, Advice, 26 May 2014, p. 5.

regarded as having the effect of substantially obstructing senators in the performance of their functions.¹⁴

1.22 If people apprehend that their communications with senators may be monitored, this may deter them from providing information to senators. This may, in turn, limit the information available to senators and constrain their capacity to put matters before parliamentary committees.

1.23 These concerns are heightened in this case, as the department charged with administering the CCTV system has been the subject of ongoing Senate committee investigation. The committee recognises the potential for unauthorised use of the CCTV system to affect the Finance and Public Administration committee's oversight of DPS.

1.24 Against this background, the conduct raised by Senator Bernardi and Senator Faulkner could potentially constitute a contempt.

The taking of disciplinary action as a possible contempt

1.25 Privilege Resolution 6 provides:

(11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

1.26 The matter before the committee does not involve a witness, but rather a person communicating with a senator. The protection of people providing information to senators rests on the same principles as the protection of witnesses, but applies in a narrower set of circumstances. These were identified in the committee's 67th report.¹⁵

1.27 There are two distinct ways in which the provision of information to a senator may be said to be protected by the law of privilege. First, as a legal immunity. The provision of information may be covered by parliamentary privilege if there is a sufficiently direct connection between the provision of information to a senator and the senator's use of it in "proceedings in Parliament", within the meaning of section 16 of the Parliamentary Privileges Act. This is a question for the courts.

1.28 Secondly, the Senate may in some circumstances protect the provision of information with its contempt powers. Where there is a sufficiently direct link between the provision of information and "proceedings in parliament", the Senate may treat the imposition of a penalty on a person who provides information to a senator as a contempt. It did so in the case of Mr Michael Rowley for taking legal action against

14 Committee of Privileges, 67th Report, *Possible threats of legal proceedings against a senator and other persons*, September 1997, paragraph 2.12.

15 Committee of Privileges, 67th Report, *Possible threats of legal proceedings against a senator and other persons*, September 1997. See also 125th Report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, December 2005.

Mr David Armstrong, an informant of former Senator O’Chee.¹⁶ As the Clerk notes in her advice to Senator Faulkner, these are separate, but related, questions.¹⁷

1.29 The Clerk also drew attention to a paper by her predecessor, Harry Evans, entitled “Protection of Persons who Provide Information to Members”, in which he observed that in a case “where interference with the provision of information to a senator clearly had the effect or tendency of hindering a senator in the free performance of the senator’s duties, it would be lawful to treat such interference as a contempt”. That article draws heavily on advice the former Clerk provided to this committee, which was endorsed in the committee’s 67th report.

1.30 It is clear that, in such circumstances, the taking of disciplinary action against a person in connection with the provision of information to a senator may constitute a contempt.

1.31 The committee’s tasks here are to determine: (a) whether the provision of information was sufficiently connected to proceedings to warrant protection; and (b) if so, whether any action was taken against the employee ‘as a result of’ or ‘in connection with’ her providing information to Senator Faulkner.

1.32 The next part of the report outlines the committee’s approach to this inquiry.

Conduct of the inquiry

Background information

1.33 The committee has before it the transcript of proceedings of the Finance and Public Administration Legislation Committee hearing of 26 May 2014, the letters from Senator Bernardi and Senator Faulkner raising the matter and the advice provided to Senator Faulkner by the Clerk of the Senate, which was tabled at the hearing.

1.34 The committee sought and received background information from the then President of the Senate, Senator the Hon. John Hogg, and the DPS Secretary about the operation of the CCTV system. These were of assistance to the committee in considering the question whether the use of the CCTV system was authorised by, and undertaken in accordance with, the Code of Practice. Members also participated in a tour of some of the security facilities of Parliament House, which was of great value in assisting the committee to understand the architecture and operation of the system. The committee particularly thanks the security staff who assisted in this regard.

1.35 This is not an inquiry about security matters, rather it is about the use of the parliamentary security system for unrelated matters.

16 67th Report. This report is significant, in that it identifies circumstances in which the provision of information to a senator may be protected by the Senate’s contempt jurisdiction. *See also* 125th report, at paragraphs 4.79 to 4.84.

17 Clerk of the Senate, Advice, 26 May 2014, p. 4

Senator Faulkner's submission

1.36 The committee wrote to Senator Faulkner to seek further details of the circumstances which gave rise to the terms of reference. Senator Faulkner provided a submission and, after receiving assurances about the confidentiality of sensitive material, provided a volume of correspondence with individuals, including the employee shown in the CCTV images. The committee considers it unnecessary to publish the additional volume of correspondence referred to at this time.

1.37 In his submission, Senator Faulkner reiterated the concerns he raised in his letter to the President:

I believe my capacity to perform my duties as a senator has been impaired irreparably by the inappropriate use of [CCTV] cameras within the parliamentary precinct. I do not accept that my movements, and the movements of the constituents I represent, within the corridors and rooms of this parliament should ever be under surveillance.¹⁸

1.38 He repeated his contention that the CCTV system has been used in a manner which is not authorised by the Code of Practice:

The only purposes of such cameras and the images they capture, are outlined in paragraph 5 of the Code. These purposes do not include tracking the movements of DPS staff members, or other citizens, properly and lawfully engaging with Senators. In my view, the use of CCTV footage and images for purposes outside the Code of Practice is an improper interference with the free performance of my duties as a senator, and an offence.¹⁹

1.39 He also reminded the committee of media allegations aired in 2011 about misuse of parliamentary security cameras to try to identify people providing him information in relation to an inquiry into DPS. These were discussed in an estimates hearing in 2012, at which DPS officers assured him there was no substance to the reports. He now submits:

I accepted in good faith the evidence [DPS] officers provided to the Committee. Two years later, evidence has emerged that the alleged improper use of CCTV footage and images has indeed occurred, leading me to be more convinced than not that it also occurred on that earlier occasion.²⁰

1.40 As part of the current inquiry, the Privileges Committee asked DPS what the basis was, at the time, for giving the various assurances at that time, and what investigations the department had undertaken to confirm the evidence it had given, and what the outcome of those investigations had been.

The response from the Secretary of DPS, Ms Mills, indicates that the department has no significant records of any such investigation:

18 Senator Faulkner, submission, p. 1

19 Senator Faulkner, submission, p. 1.

20 Senator Faulkner, submission, p. 3.

I regret to advise that current DPS officers are not in a position to answer these questions, as it is not within the knowledge of our officers and is not (despite extensive searches) reflected in the department's records to any great extent.²¹

Evidence from DPS

1.41 After considering this background information, the committee sought a submission from DPS. In doing so, the committee asked the DPS Secretary to respond to a number of questions, centring on approval processes under the Code of Practice, and also asked for copies of any internal DPS records relating to the use of the images.

1.42 The committee asked DPS what the authority was for using the CCTV system to investigate staffing matters, and for a copy of any advice DPS had relied on in forming that view. Rather than providing any advice it might have had in its possession at the time, DPS instead commissioned legal advice on the matter which provides a rationale for its actions but not an explanation of its thinking when relevant decisions were made. The advice also addressed the terms of reference more broadly. Elements of that advice appeared to run contrary to the committee's understanding of the powers, privileges and immunities of the Parliament, so the committee sought an assessment of it from the Clerk of the Senate.

Outline of report

1.43 Chapter 2 deals mainly with the evidence provided by DPS. It is convenient to deal separately with the question of the CCTV Code of Practice. This is considered in chapter 3. Chapter 4 deals with the primacy of the powers, privileges and immunities of the Parliament. It also contains the committee's conclusions and recommendations.

21 Letter to the Chair of the Privileges Committee, 19 September 2014.

Chapter 2

The evidence from DPS

2.1 This chapter deals with the main arguments put forward in the submission from DPS. It contains an outline of the investigation which sparked the inquiry and then deals with the arguments submitted on the matters of privilege. Other matters relevant to those arguments are dealt with as they arise.

Contradictory evidence

2.2 It is necessary first, however, to deal with contradictions between the evidence the department provided at the May estimates hearing, its submission and additional documents provided on 11 November 2014.

2.3 The DPS Secretary told the estimates hearing in May 2014 that the matter now referred to the Privileges Committee had only come to her attention on the day of that hearing, on the basis of inquiries she made after questions were asked of the Senate department.

2.4 Her evidence was that it was “possible DPS has breached the code [of practice] in investigating a case to do with a staff member”,²² and she explained the apparent breach as “an inadvertent conflict between staff management issues and the protocol of the protection of members’ and senators’ rights to do business in the building”.²³ The Secretary told the hearing that “there may have been an inadvertent and ancillary breach of the statement of purpose” because the CCTV footage “may have captured [the employee] doing other activities in the building besides the one for which the CCTV footage was released”.²⁴

2.5 When asked whether the activities she had referred to involved a person or people providing information to Senator Faulkner, Ms Mills replied “That is what I am looking into. That is the issue that was brought to my attention today...”²⁵

Submission

2.6 The DPS submission contradicted the Secretary’s evidence at estimates. It stated that the discovery of footage showing the employee placing an envelope under a senator’s office door was communicated to the Secretary on 27 February, three months prior to the hearing. The submission did not suggest that there had been an inadvertent conflict. Instead it is founded on the Secretary’s response, given the same day, “that ‘contact by individuals with parliamentarians is not something we monitor...’”. The submission asserts that:

22 FPA transcript, 26 May 2014, p.23.

23 FPA transcript, 26 May 2014, p.25.

24 FPA transcript, 26 May 2014, p. 28.

25 FPA transcript, 26 May 2014, p. 28.

Accordingly, the footage relating to the visit to the Senator's office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator's office.²⁶

2.7 The submission contends that the Secretary "made a conscious decision *not* to take action in respect of Employee X's approach to Senator Faulkner by effectively instructing that DPS could not consider that conduct and had no interest in the matter."²⁷ The submission does not explain why the Secretary did not acknowledge or address this "conscious decision" and instruction when later asked about the matter at estimates.

Additional documents

2.8 When the committee sought a submission from DPS it had asked for copies of any internal DPS records relating to the use of the images, but none were provided. The committee therefore asked for records to substantiate the above assertions and to clarify related matters. Additional documents were provided on 11 November 2014, among them the request that the Secretary approve a preliminary Code of Conduct investigation²⁸ and email correspondence containing the Secretary's response to the discovery of the contentious images.²⁹

2.9 Despite her evidence to the estimates hearing that the matters now referred to the Privileges Committee first came to her attention during those hearings, these documents demonstrate that the Secretary was made aware of all aspects of the incident as it transpired. In particular, the documents show:

- that when Ms Mills approved a preliminary code of conduct investigation on 25 February she also approved the release of still photographs from security cameras
- that the request which Ms Mills approved on 25 February informed her that the CCTV system had already been used to gather information on the matter
- that the discovery of footage showing the employee placing an envelope under Senator Faulkner's office door was communicated to Ms Mills on 27 February.

2.10 The Secretary's response is contained in an email to one of her staff:

You may be aware that contact by individuals with parliamentarians is not something that we monitor in order to provide privacy to them in the conduct of their business. Happy to discuss.

2.11 The submission and additional documents cast considerable doubt upon the evidence given by the Secretary. The committee has not been able to reconcile the

26 DPS submission, 26 September 2014, paragraph 21.

27 DPS submission, paragraph 40.

28 Referred to in the DPS submission at paragraph 17.

29 Referred to in the DPS submission at paragraph 21.

evidence given at the estimates hearing with the submission and documents which DPS has subsequently provided, and considers that the Finance and Public Administration Legislation Committee was misled about the Secretary's knowledge of the events that led to this inquiry.

2.12 The committee has determined that it is appropriate in the circumstances to publish the relevant documents so that they are available to the Finance and Public Administration Legislation Committee in its oversight of the Department of Parliamentary Services.

2.13 There should be no doubt, however, that the committee considers the misleading of the legislation committee in these circumstances to be a serious breach of accountability and probity.

The Code of Conduct investigation

2.14 An anonymous note, described as "belittling and accusatory", was left for a manager in DPS, who found it distressing. On advice from the DPS Secretary, the recipient raised the matter with the DPS Human Resource (HR) Services section, which commenced an investigation. The main DPS submission³⁰ sets out an account of its investigation.

2.15 'Swipe access' records from the parliamentary security system were checked, which showed that a particular DPS employee (referred to as 'Employee X' in the submission) had entered Parliament House on the night before the note was discovered. HR officers then sought approval to view CCTV footage to confirm the employee's "entry to, exit from and movements within, Parliament House on the evening of 18 February 2014". It is apparent from emails attached to the submission that this approval was given orally.

2.16 The footage showed the employee near the work area where the note was found (although it didn't show her entering that area) and showed her in some images carrying papers which she no longer had when she left the building. On the basis of this information, HR recommended that a preliminary code of conduct investigation be undertaken – a recommendation the Secretary approved on 25 February. The submission later explains that a preliminary investigation is part of ordinary administrative practice, designed to help a decision-maker determine whether "there is a suspected breach of the Parliamentary Service Code of Conduct that ought to be dealt with by way of a formal investigation".³¹

Committee comment

2.17 The committee notes that the above activity – interrogation of the parliamentary swipe access records and the accessing of the CCTV security system – occurred prior to the approval of this preliminary investigation.

30 At paragraphs 11 to 30.

31 DPS submission, paragraph 39.

The preliminary investigation commences

2.18 Later that day, the officer undertaking the investigation of the distressing note requested access to relevant footage and the isolation of particular images. This was approved by the Assistant Secretary in a one word email (“approved”) on 26 February. The investigating officer emailed the employee seeking an explanation of her presence and “precise movements” in the building on the evening of 18 February. The email mentions that security footage had been checked. When the employee responded the following day, the submission records that DPS regarded her explanation as “unsatisfactory, and potentially dishonest”.³²

2.19 At around the same time security staff who had continued to scan the security footage and located images that “showed (for the first time)” the employee “placing an envelope under the door of a Senator’s suite”. The submission does not identify the senator, but records that:

This information was communicated to the Secretary on 27 February, whereupon the Secretary responded that ‘contact by individuals with parliamentarians is not something we monitor...’. Accordingly, the footage relating to the visit to the Senator’s office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator’s office.³³

The formal investigation

2.20 The submission records that the Secretary, on 12 March, approved a formal Code of Conduct process “solely in connection with” the anonymous note; that “No reference to Employee X’s visit to the Senator’s suite was included in the briefing” and the investigator was not “at that stage” briefed with any CCTV material relating to the visit to the senator’s office.³⁴

2.21 Although not referred to in the main submission, an attachment indicates that the investigator sought and was granted a copy of unspecified “footage” on 31 March 2014. The record provided of this request and approval does not provide any identifying detail.

2.22 On 2 April 2014, the investigator provided the employee with details of the formal investigation, to which was appended printed copies of CCTV images. On 14 April 2014, the employee responded to the allegations and, according to the investigator’s draft report, “at this stage noted (for the first time)” that there had been two reasons for her visit to Parliament House... ‘I also had some personal business with a Senator and left documents at the Senator’s office’.³⁵

32 DPS submission, paragraph 20.

33 DPS submission, paragraph 21. The committee sought records from DPS to substantiate these matters – see **Contradictory evidence**, above.

34 DPS submission, paragraph 22.

35 DPS submission, paragraph 25.

2.23 The draft investigation report and CCTV footage was sent to the employee on 13 May. The report referred to the employee placing an envelope under the door of “suite 42”, recited the employee’s statement that she had ‘personal business’ with the senator, and stated the investigator’s view that this failed to “adequately account for” the employee’s visit “having regard to the balance of her route”. The submission contends that “The draft report did not otherwise engage with Employee X’s visit to the Senator’s suite.”³⁶

2.24 Two weeks later the matter was raised at estimates, with an indication it would be raised as a matter of privilege. The Secretary then ceased the investigation, citing the “undesirability of a Code of Conduct process remaining unresolved for a potentially substantial length of time”. Correspondence from the employee indicates this occurred on 24 June 2014.

2.25 This part of the submission concludes by stating that the employee “has subsequently left the employment of DPS for reasons not connected to the Code of Conduct investigation of the CCTV footage issue.”³⁷

The employee

2.26 For her part, the employee denies leaving the note. In a letter to Senator Faulkner, dated 11 April 2014, the employee describes the commencement of the Code of Conduct process. She states:

...of course I haven’t revealed why I was in the building that night but I suspect I am going to be grilled by DPS about where I was walking at that time of night and what was in the envelope... I’m concerned that DPS’s story for using the security footage is a bit of a furphy and they are looking to find anyone that provides senators with information about the department. Given my current situation, I’m also concerned that this is not a legitimate use of the security cameras.

2.27 The committee considers it was not unreasonable for the employee to seek to withhold from DPS the fact that she had visited a senator’s office in the circumstances. An annotation to the document, marked ‘update’ notes advice from the employee’s solicitor recommending she advise DPS that she was going to a senator’s office for personal business.

2.28 In another note the employee states her belief that “Three long-term ongoing staff members...have had their employment terminated over the past three months. ...they were monitored with the in-house security cameras over several months without their knowledge and without a written policy.”

2.29 The committee has not seen any evidence to support this claim, however it has been provided with records of the use of CCTV images in other staff-related cases. In each case, the record comprises a single email request and a written record of approval being made. The fact that stories such as these are circulating in DPS is no doubt

36 DPS submission, paragraph 27.

37 DPS submission, paragraph 30.

capable of increasing the apprehension of staff that they may be monitored for different purposes.

2.30 With that background, the committee turns to the DPS submission on the terms of reference.

Arguments in the DPS submission

2.31 The DPS submission deals first with paragraph (b) of the terms of reference, arguing that “a proper understanding of the disciplinary matter will assist the Committee in reaching the correct conclusions on the remainder of the issues in question”.³⁸ The overall approach of the submission is to treat the question of possible improper interference with senators’ duties as ancillary to the question whether a penalty has been inflicted on the employee.

2.32 The committee does not agree that this approach is warranted. Although the matters turn on the same facts, they are separate questions. As has been noted, the chief concern raised by the Finance and Public Administration Legislation Committee and by Senator Faulkner is the matter of improper interference.

(a) Improper interference with the free performance of a senator’s duties

2.33 The DPS submission on the improper interference matter fails in many ways to engage with the issues at hand. In particular, the task that it sets itself is to demonstrate that there has been no improper interference either by way of:

- a. disciplining an employee over the provision of information to Senator Faulkner; or
- b. use of the CCTV system to conduct unauthorised surveillance, either of Senator Faulkner, his office, or persons who may attend his office to provide information.³⁹

2.34 The submission goes on to argue, in effect, that the use of the CCTV system falls short of a dictionary definition of “surveillance” and cannot therefore constitute interference.⁴⁰ It should be understood that the committee has not been charged with assessing whether there has been “unauthorised or improper surveillance”. While different parties have used the terms “surveillance”, “spying”, “monitoring” and, simply, “use of footage”, the committee’s concerns, and its terms of reference, are about improper interference. As has been noted, it is the effect of the conduct that concerns the committee. Conduct that has the effect or tendency of obstructing senators in their duties may be dealt with as a contempt, regardless of the form or description of that conduct.

2.35 In any case, DPS submits that:

38 DPS submission, paragraph 34.

39 DPS submission, paragraph 54.

40 Paragraphs 59 to 65.

Where the one-off use of CCTV footage, referable to a particular incident not known to be connected to parliamentary business, has been duly authorised under the CCTV Code of Practice..., and that Code of Practice has in turn been authorised by the Presiding Officers..., it is difficult to see how that use could nonetheless constitute unauthorised or improper surveillance, contrary to parliamentary privilege.⁴¹

2.36 The following matters invite examination:

- the contention that the incident was “not known to be connected to parliamentary business”
- whether the use of CCTV footage may amount to interference
- whether the use of the CCTV footage was “duly authorised under the CCTV Code of Practice”.

The transacting of parliamentary business

2.37 A theme repeated throughout the submission and accompanying advice is that there was nothing to indicate to DPS officers that the interaction caught on camera related to parliamentary business, for example:

Prior to Senator Faulkner’s indication at Senate Estimates on 26 May 2014 (which was clearly past the time that relevant decisions were made) that he considered [the employee] to be a whistleblower, there was no indication that the purpose of her visit may have related to parliamentary proceedings.⁴²

2.38 This is in support of a thesis that, if the investigators were unaware they were witnessing something connected to parliamentary business they could not be said to be obstructing it, and certainly not knowingly. Whatever the merits of that case, the additional documents provided on 11 November dispose of this line of argument.

2.39 The email correspondence in those documents is illuminating. On 27 February 2014, after writing to the employee requiring an explanation of her presence in the building, the officer appointed to undertake the preliminary code of conduct investigation wrote to his supervisor:

After sending this letter (at 4.13 PM yesterday) I was advised ... (at 4.55 PM yesterday) that there was also security camera vision of [the employee] depositing a “brown envelope” at the office of Senator John Faulkner. Given that Senator Faulkner is now in opposition I question what legitimate reasons there could be for depositing a “brown envelope” at his office at that time of night and also recall Senator Faulkner’s keen interest in matters pertaining to Hansard in Senate estimates earlier this week...

2.40 The supervisor then wrote to the Secretary:

41 Paragraph 63.

42 DPS submission, paragraph 58. *See also* paragraphs 25, 63, 65 and 71; and the discussion of “breach of parliamentary privilege” in the AGS advice.

Through investigating additional footage of [the employee's] movements, DPS footage has also shown that [she] deposited a brown envelope under the door of Senator Faulkner's office before our Senate Estimates Hearing. It is also noted that Senator Faulkner is now in opposition which does question whether the Parliamentary Service Value of 'Impartial' has been breached in this case.

Noting that we have previously discussed the issue of DPS employees being in a privileged position by working in Parliament House and having 'direct' contact with Parliamentarians, as well as noting that some Hansard Editors this week may also have been distributing material... I wanted to draw this substantial evidence to your attention.

2.41 The first reaction of the officer appointed to undertake the preliminary investigation is to question the legitimacy of the employee's actions. His supervisor sees it as "substantial evidence" of a breach of the code of conduct, quite distinct from the matter they are investigated.

2.42 Their references to the senator now being 'in opposition' are curious.

2.43 In any case, both officers immediately associate the envelope with Senator Faulkner's participation in Senate estimates, and with DPS' appearances there. Both officers immediately draw adverse inferences. This exchange demonstrates the inherent risk in allowing the use of CCTV images in these circumstances.

2.44 The exchange also reveals further contradictions in the evidence supplied by DPS. Its legal advice argues:

On the facts of the case, it seems clear that the DPS officers who were involved in the use of the footage were unaware they were witnessing the transacting of any parliamentary business. Nothing Employee X had told them suggested this was the case – quite the opposite.⁴³

2.45 The emails contradict the conclusions DPS is asking the committee to accept. They demonstrate that the officers involved knew what they were witnessing, and came to this conclusion before the employee has told them *anything*. They also undermine the factual basis of that part of the legal advice.

2.46 The report now turns to the second DPS argument about improper interference – that the 'one-off' use of footage cannot amount to interference.

Use of CCTV footage as improper interference

2.47 In paragraph 56 of its submission, DPS states that it:

accepts that sanctioning an employee over their provision of information to a parliamentarian, for parliamentary purposes, could constitute an improper interference... insofar as that action might tend to discourage persons from providing information to a senator for parliamentary purposes.

43 AGS Advice, 18 September 2014, paragraph 77.

but it argues⁴⁴ that there is “simply no connection between the investigation and Employee X’s dealing with the Senator”.

2.48 In paragraph 66 the submission argues that Senator Faulkner has not been “hampered or obstructed...insofar as his ability to collect information from ‘whistleblowers’ or others”, citing “the fact that Employee X apparently returned to Senator Faulkner with concerns about the investigation” as evidence for this claim. The submission does not otherwise engage with the likelihood of others being deterred from providing information to senators, despite it being the focus of the complaints raised by the Finance and Public Administration Legislation Committee and by Senator Faulkner.

Committee comment

2.49 The fact that the employee found another way to communicate with Senator Faulkner does not deal with the broader question whether other people may be deterred from providing information to senators. The use of the CCTV system which has led to this inquiry has similarities to allegations aired in the media 3 years earlier that security cameras were used to try to identify whistleblowers providing information to Senator Faulkner. The committee has also been provided with records indicating the use of CCTV images for other purposes involving staffing matters, which may add further to people’s apprehension about being monitored.

2.50 Such apprehensions may have the effect of discouraging people from providing information to senators, which may limit the information available to them and affect their committee work.

2.51 Before leaving this area it is worth noting that DPS also states that:

unauthorised surveillance of a parliamentarians’ office could be contrary to parliamentary privilege, especially in cases where the product of that unauthorised surveillance is use to intimidate persons who provide information to parliamentarians. However, once again, DPS submits that this is simply not made out on the facts.⁴⁵

2.52 The fact that DPS seems to consider that there might be circumstances in which the unauthorised surveillance of a parliamentarians’ office might *not* be contrary to privilege is of concern to the committee.

Authorisation under the CCTV Code of Practice

2.53 Turning to the third argument in this area, DPS submits that there can be no finding of improper interference with senators’ duties where:

DPS’ actions in using CCTV footage as evidence in disciplinary proceedings was authorised under, and in accordance with, procedures

44 DPS submission, at paragraph 57.

45 DPS Submission, paragraph 58.

approved by the Presiding Officers, and in circumstances where those procedures were applied for proper and lawful purposes.⁴⁶

2.54 The argument is inconsistent with well-established principles about the powers, privileges and immunities of the parliament, and the manner in which they constrain administrative action. An act which is otherwise “lawful” or “proper” or “authorised” may nevertheless amount to a contempt. A sound formulation of that advice, to which the committee has referred many times, is that:

In establishing whether a contempt has been committed, the matters to be examined are the tendency, effect and intention of the act in question, not the lawfulness of the act or whether there is otherwise a legal right to perform the act.⁴⁷

2.55 It is a matter of concern to the committee that the administrators of the CCTV system have put forward an argument which is contrary to parliamentary law and practice. The committee is also concerned about short-comings in the administration of the system revealed by the matter. The report deals in some detail with the authority of the Code of Practice in chapter 3. For present purposes, it suffices to outline the committee’s conclusions on this argument, which are as follows:

- the approval of the CCTV Code of Practice by the Presiding Officers gives it no special status. The Presiding Officers’ powers here are exercised on behalf of the Parliament, subject to any orders of the Houses, and subject to the powers, privileges and immunities of the Houses and their members. Any activity (including the operation of the CCTV system) undertaken under the authority of that power is subject to the same limitations.
- the particular use of the CCTV system in this case was not authorised *under* the Code of Practice, because the use doesn’t come within its overarching security purpose, nor within a “plain language” reading of the Code.
- in any case, the particular use of the CCTV system did not occur *in accordance with* the Code, because of some apparent breaches, including a failure to seek the Presiding Officers’ approval for the release of images.

(b) The taking of disciplinary action

2.56 On the second matter referred, the submission argues that there can be no finding that action was taken against an employee because of the provision of information to a senator because no-one in DPS was aware of the employee’s dealings with Senator Faulkner (or any senator) at the time decisions were made about instigating and undertaking an investigation into a code of conduct matter: “the

46 DPS submission, paragraph 4.

47 Advice of the former Clerk of the Senate to the Committee of Privileges, 6 March 1989; published by the committee with its 18th Report.

investigation was commenced and undertaken in good faith by those involved with due deference to principles of parliamentary privilege.”⁴⁸

Timing and the taking of disciplinary action

The submission argues:

- the timeline “clearly demonstrates that there was no causal connection between the taking of disciplinary action” against the employee and her interactions with the senator;⁴⁹
- preliminary investigations were approved on 25 February, and the employee’s interactions with the senator not discovered until the following day.⁵⁰

2.57 The committee considers it unlikely that the disciplinary action commenced as a result of the employee’s interaction with the senator, and agrees that the facts do not support this.

2.58 The submission also argues that, although DPS officers knew about that interaction when the formal investigation was approved “it does not follow” that this new information “was taken into account or that it changed the rationale of the decision-makers in determining a course of action”. Rather, “the relevant decision-maker (the Secretary) made a conscious decision *not* to take action in respect of Employee X’s approach to Senator Faulkner, by effectively instructing that DPS could not consider that conduct and had no interest in that matter.”⁵¹

2.59 There is no way to substantiate this assertion. This demonstrates the inherent problem with allowing the use of the images. As noted in relation to the email correspondence of 27 February, both officers involved assumed what they were witnessing was a departmental whistle-blower providing information to a senator, immediately drew adverse inferences from the exchange and communicated these to the Secretary. It is impossible to establish whether that information influenced those officers’ decisions – or the Secretary’s decisions – in the subsequent stages of the investigation. The submission denies that this is the case, but there is no way of knowing.

2.60 After the Code of Conduct process was discontinued, the committee understands that these officers (including the Secretary) were involved in making a series of employment decisions in which the employee was refused redeployment within DPS and eventually departed with an involuntary redundancy. Again, there is no way of establishing whether the information gained by this use of the CCTV system played any part in those decisions. The committee recalls that the description of the employee’s departure in the DPS submission simply notes that the employee “has

48 DPS Submission, paragraph 3.

49 DPS Submission, paragraph 37.

50 DPS Submission, paragraph 38.

51 DPS submission, paragraph 40.

subsequently left the employment of DPS for reasons not connected to the Code of Conduct investigation of the CCTV footage issue.”⁵²

Committee comment

2.61 The committee considers that the timing of this instance does not allow that the disciplinary proceedings arose because of the provision of information to Senator Faulkner. However it is not possible to determine whether subsequent decisions in the investigation and in other matters involving the employee were influenced by knowledge of the CCTV images.

2.62 The committee has already dealt with the likely connection of the provision of information to parliamentary proceedings and concludes that, were it to be shown that action was taken against the employee in connection with the provision of this information to Senator Faulkner, it would be open to the Senate to deal with that action as a contempt.

2.63 In the next chapter the report deals in more detail with the CCTV Code of conduct, before returning to its conclusions and recommendations in chapter 4.

52 DPS submission, paragraph 30.

Chapter 3

The CCTV Code of Practice

3.1 This chapter deals with the CCTV Code of Practice and addresses the argument put by DPS that there can be no finding of improper interference with senators' duties where:

DPS' actions in using CCTV footage ... was authorised under, and in accordance with, procedures approved by the Presiding Officers, and in circumstances where those procedures were applied for proper and lawful purposes.⁵³

3.2 The committee does not accept this argument for the reasons set out in this chapter. As has been noted, an action which is otherwise "lawful" or "authorised" may nonetheless be dealt with as a contempt if it amounts to improper interference in the terms discussed in chapter 1. Administrative action undertaken on behalf of the Parliament may not override the powers, privileges and immunities of the Houses and their members.

3.3 Before turning to the argument, it is worth looking at the evolution of the current Code and the context in which it arose.

Development of the Code of Practice

3.4 The CCTV security cameras in Parliament House operate in accordance with a Code of Practice. A background paper provided by DPS details its evolution. There have been three versions since cameras were installed in the House of Representatives and Senate corridors:

- CCTV Cameras in the House of Representatives and Senate Corridors: Protocols for the Management of Recorded Images (2003)
- Operating Policies and Procedures [OPP] no 10.18: CCTV Code of Practice (4 February 2009)
- Operating Policies and Procedures [OPP] no 10.18: CCTV Code of Practice (23 June 2011).⁵⁴

3.5 The 2003 protocols were the subject of extensive consultation. They arose from a proposal put to the Presiding Officers in late 2001 and a detailed submission in February 2002 "by the Security Controller, endorsed by the Usher of the Black Rod and the Serjeant-at-Arms".⁵⁵ A further proposal was put to the Presiding Officers in October 2002 about the management of recorded images, and consultations were then

53 DPS submission, paragraph 4.

54 Copies of each of the codes were attached to the background paper. The committee was also provided with copies of the security-in-confidence versions of the 2009 and 2011 Codes. These contain additional operational detail and the committee does not consider it appropriate to publish them.

55 DPS background paper, p. 2.

undertaken with party whips and with the Joint House Committee. The submission notes:

Minutes from a meeting of 9 December 2002 show discussion of the proposed protocols, including concerns raised by parliamentarians in relation to the effect of the CCTV cameras on their capacity to carry out their duties. It appears from later submissions put to the Presiding Officers that the Joint House Committee ultimately agreed to the proposed protocols.⁵⁶

3.6 These consultations show that the protocols were intended in part to protect senators and members against improper interference with their duties. The Press Gallery was also consulted and its views taken into account to a degree in developing the final version of the protocols, agreed to by the Presiding Officers on 17 September 2003.

3.7 By contrast, little consultation occurred on the subsequent versions of the code. The 2009 version “was developed by reference to relevant standards and guidelines (including the *Australian Standard 4806.1-2006 (Closed Circuit Television)*”. The committee notes, however, the statement in the submission that:

The draft OPP [Code] was endorsed by the SMB, which considered the draft OPP to be consistent with previous approved protocols and consultations.⁵⁷

Committee comment

3.8 The committee considers that this assessment, and the nature of the consultations referred to above, should be seen as guidance in the interpretation of the Code.

3.9 The 2009 Code of Practice was revised in 2011, principally to reorder content, remove administrative procedures and reflect updates to the security system. In other regards they are substantially the same.⁵⁸

Authorisation of the Code

3.10 The AGS advice describes the relevance of the Code of Practice, contending that:

...the Code can properly be regarded as expressing the circumstances in which the Presiding Officers have authorised dealings with CCTV footage captured in the precincts. Because of that, in our view, a court will be reluctant to characterise a dealing with CCTV footage which is duly

56 DPS background paper, p. 3.

57 DPS background paper, p. 3. The Security Management Board (SMB) is a statutory board empowered under the *Parliamentary Service Act 1999* – consisting of the Secretary, DPS and nominees of the Presiding Officers (namely, the Usher of the Black Rod and the Serjeant-at-Arms) with the function of providing advice *as required* to the Presiding Officers on security policy and the management of security measures.

58 DPS background paper, pp. 3-4.

authorised under the Code as an interference with parliamentary privilege or a contempt.⁵⁹

3.11 The advice also suggests (in a footnote to paragraph 62) that a court might find “more generally that use of CCTV footage cannot support a finding of contempt *if it is undertaken in accordance with the Code*”. [*emphasis added*] The committee does not agree with this conclusion.

The parliamentary precincts

3.12 To understand the limits of the Presiding Officers’ power to authorise such dealings, it is necessary to understand the authority under which the CCTV system operates. That authority arises from the Presiding Officers’ powers to control and manage the parliamentary precincts. Control and management of the precincts is vested by the Houses of Parliament in their Presiding Officers by a long thread of tradition, Constitutional authority, resolution and legislation. This is a crucial point: the power belongs to the Houses and is exercised on their behalf by the Presiding Officers.

3.13 The *Parliamentary Precincts Act 1988* confirms this position. Section 6(2) expressly provides that the Presiding Officers’ actions in this area exist “subject to any order of either House” and section 12 specifies that nothing in the Act is to be taken as derogating from the powers, privileges and immunities of each House and of their members and committees. Any activity undertaken under the authority of the Precincts Act – including, in this case, the installation and use of a CCTV security system, and endorsement and implementation of a Code of Practice for its use – is necessarily subject to the powers, privileges and immunities of the Parliament.

3.14 The Clerk points out that the AGS advice argues the opposite:

It elevates the alleged authorisation by the Code of Practice for CCTV of the particular use of footage by DPS above the question of the compatibility of the Code with the powers, privileges and immunities of the Houses and their members. It opines that authorisation of the Code by the Presiding Officers pursuant to the authority conferred by the Precincts Act is sufficient to dismiss any suggestion that an action argued to be duly authorised by the Code could reasonably be characterised ... as “an interference with parliamentary privilege or a contempt”...⁶⁰

3.15 The committee can see no basis for this proposition, which is contrary to well-established principles about the operation of laws with respect to the parliament. As the Clerk explains, there is no “mystique” about the parliamentary precincts: “parliamentary powers and immunities do not depend on the precincts for their operation [but] operate within the jurisdiction of the Commonwealth”, and the

59 AGS advice, paragraph 62.

60 Clerk, Assessment, pp. 7-8.

ordinary law of the land applies in the precincts.⁶¹ The Precincts Act does not give the Presiding Officers the authority to set aside the powers of their Houses. Section 12 of the Act preserves the primacy of the powers, privileges and immunities of the Parliament.

3.16 A much earlier Privileges Committee expressed the view that security arrangements in Parliament House may be accepted provided they were not in conflict with the rights of senators.⁶² The Senate is able to maintain this requirement in two ways: first, by the passage of Senate orders, and secondly by ensuring that the administration of security measures is undertaken with proper regard for its powers, privileges and immunities by exercising its contempt jurisdiction should it be required.

Conclusion

3.17 The committee dismisses any suggestion that it is beyond the power of the Senate to treat conduct involving the use of the parliamentary CCTV system as a contempt merely because the use of the system was – or was claimed to be – authorised under the CCTV Code of Conduct.

3.18 The committee agrees with the Clerk’s conclusion that:

The fact that an activity may be duly authorised under a power conferred by the Precincts Act is no guarantee that the same activity may not also be in conflict, potential or actual, with the powers, privileges and immunities of each House and of their members and committees.⁶³

3.19 The Presiding Officers exercise their power to control and manage the parliamentary precincts on behalf of the Parliament; subject to orders of either House; and subject to the powers, privileges and immunities of the Houses and their members. Any activity undertaken under the authority of this power – including the use of a parliamentary security system and the implementation of a Code of Practice – is necessarily subject to the same limitations.

Authorisation under the Code

3.20 In its submission, DPS argues that:

...its actions in using the CCTV footage as evidence in disciplinary proceedings was authorised under, and in accordance with, procedures approved by the Presiding Offices, and in circumstances where those procedures were applied for proper and lawful purposes.⁶⁴

3.21 Senator Faulkner disputes this view:

61 Clerk of the Senate, Assessment of AGS advice, p. 7. It is well established that the ordinary law of the land includes “the law respecting the privileges of parliament itself”. See *Rees. v McCay* [1975] 7 ACT; reported in BC Wright (ed.), *House of Representatives Practice*, 6th edition, p. 125]

62 Report on *Ensuring the Security of Parliament House*, May 1978.

63 Clerk of the Senate, Assessment of AGS Advice, p. 8.

64 DPS submission, p. 2.

The only purposes of such cameras and the images they capture, are outlined in paragraph 5 of the Code. These purposes do not include tracking the movements of DPS staff members, or other citizens, properly and lawfully engaging with Senators.⁶⁵

3.22 The Clerk's advice describes different aspects of the Code of Practice, particularly paragraph 5, which lists the purposes for which CCTV may be used, and paragraph 6, which enumerates the key principles applying to the operation of the system:

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...

...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.⁶⁶

3.23 The relevant part of the code is as follows:

Statement of purpose

5 The CCTV system is intended to provide surveillance to areas in and around Parliamentary precincts (as established by the Parliamentary Precincts Act 1988). Subject to this Code of Practice, the CCTV system is only to be used for the following purposes:

- (a) Assist in the control and management of the Parliamentary precincts (including major or special events and traffic management).
- (b) Assist in the day-to-day management of security services including investigation of security incidents, pre-planning of security exercises, emergency evacuation exercises and monthly validation exercises.
- (c) Prevent, deter and detect crime, criminal damage, vandalism and public disorder.
- (d) Assist in identifying, apprehending and where appropriate, prosecuting offenders in relation to crime, criminal damage, vandalism and public disorder.
- (e) Provide evidence upon which to take criminal and civil proceedings.
- (f) Improve general security monitoring in the areas around the precincts, both in terms of personal security and security of premises.
- (g) Improve operational response of Security Patrols in and around Parliament House.
- (h) Assist emergency services in responding to incidents.

65 Senator Faulkner, submission, p. 1.

66 Clerk of the Senate, Advice to Senator Faulkner, 26 May 2014, p. 2.

(i) Identify and investigate incidents or accidents that could result in a compensation or insurance claim against the Commonwealth.

(j) For any other purpose approved in writing by the Presiding Officers.

3.24 The AGS advice generally proceeds on the basis that DPS' actions were authorised in accordance with the purpose described in paragraph 5(a) of the code, "to assist in the control and management of the parliamentary precincts".⁶⁷

3.25 It argues that paragraph 5(a) applies to the circumstances of the case, because DPS staff are "an integral part of the operational environment of the parliamentary precincts". A court "is very likely to find that enforcing proper standards of behaviour on the part of DPS staff in relation to accessing Parliament House after work hours is something which assists in the control and management of the parliamentary precincts."⁶⁸

3.26 This is not an interpretation that is readily apparent from the words in the Code, particularly given that the other example under that paragraph relates to control of "major or special events and traffic management".

3.27 Neither is it the clause explained, at estimates, as the purpose authorising the use of the system in this matter. That was paragraph 5(e) – providing evidence upon which to take civil proceedings. The AGS advice contends, however, that each of paragraphs 5(b) to (e) might authorise the use of the footage.⁶⁹

3.28 The question which arises is: what criteria ought be applied in interpreting the Code?

Interpreting the purposes in the Code

3.29 The committee considers that the provisions in the Code's statement of purpose ought be given their ordinary meaning. The original 2003 protocol, on which senators and members were consulted was clear. It provided that:

The installation of closed circuit television (CCTV) cameras in the Senate and House of Representatives wings of Parliament House and the capturing of images from them is solely for the purpose of assisting in the tracking of unauthorised entry to Parliament House and for the investigation of break-in, theft or damage within Parliament House.

3.30 It provided especially clear guidance on matters of accountability :

- the only reason for accessing the recordings will be to determine whether those images assist in any investigation of unauthorised access to the building or to a Senator/Member's suite, or of theft or damage to the building;

67 AGS advice, paragraph 63.

68 AGS advice, paragraphs 64 to 66.

69 AGS advice, paragraph 69.

- the Executive Leader (Security) cannot release recorded images or show those images to anybody else, without the approval of the Presiding Officers;
- if the investigation of an incident leads to a requirement to access recorded images, the Presiding Officers will arrange, within seven days, for a report on the application of these protocols to be provided to the members of the Joint House Committee.

3.31 While the committee accepts that the newer versions of the Code have expanded the purposes to which the system may be applied, the focus remains on security, safety, public order and the investigation of related incidents. The committee considers that the rationale given in the AGS advice does not give sufficient regard to the security focus of the Code and does not take into account the context in which it was introduced and operates. The Security Management Board (SMB) assessed the 2009 version of the Code to be “consistent with previous approved protocols and consultations”, an assessment which carries no weight if the Code is taken to permit this extended operation. The committee considers that the SMB’s assessment should inform the interpretation of the Code.

3.32 The Clerk considers it:

...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...given the inherent threat such monitoring would pose to members’ and senators’ freedom to go about their business without obstruction.⁷⁰

3.33 The committee concurs. The committee considers that the original protocols were designed to meet concerns such as these, as the consultations in the Joint House Committee demonstrate.

Conclusion

3.34 The committee is not persuaded that the use of the CCTV system in this matter was properly authorised under the Code of Practice. The committee considers that the words in the Code’s statement of purpose should be given their ordinary meaning. One of the principles stated in the Code is that “Senators, Members and other building occupants will be provided with clear and easily accessible information in relation to the CCTV system”. There is a corresponding accountability provision requiring publication of the Code. If the Code cannot be read and understood on its face these provisions are meaningless.

3.35 DPS provided evidence that the CCTV system had not been used to investigate staffing matters prior to this incident in February this year, although the department has used the system in relation to other staffing matters since that time. The committee had asked DPS to provide any advice it relied on in determining the system could be used for investigating internal staffing matters, but it provided no such

70 Clerk of the Senate, Advice to Senator Faulkner, 26 May 2014, p. 2.

advice. The committee considers that the use of the system for this new purpose amounts to a substantive policy change and that, if DPS considers that the Code should be extended to this purpose, it should propose to the Presiding Officers a policy change for their consideration. This would be consistent with the requirement in clause 9 of the Code, and place the decision about the matter with the Presiding Officers, on whose behalf the department administers that system.

Undertaken *in accordance with the Code*

3.36 A further question which arises is the question whether the provisions of the Code were followed. The committee considers that in some respects they were not. There are several breaches apparent in the use of the footage.

3.37 DPS told the estimates hearing that the use of the system was permissible under clause 5(e) of the Code – Provide evidence upon which to take criminal and civil proceedings. AGS advised that “In this case the proceeding which was, in a sense, on foot was the code of conduct investigation.”⁷¹ The system was first accessed *prior to* the approval of even the preliminary code of conduct investigation, so it is hard to see how proceedings were “on foot” in *any* sense.

3.38 This initial access to the footage was approved without written authority, and without any written record being created – a breach of the recordkeeping and accountability requirement in clause 19. It is of concern to the committee that officers of DPS who do not have a security function can access footage, or information about what footage may show, without any record being created.

3.39 The “Authorisations Matrix” in the security-in-confidence version of the Code provides that senior security officers may give approval for other DPS employees to view images, provided that “the viewing of the images occurs as part of their duties and serves an identified purpose i.e. insurance or legal claims.” Accountability in the use of the system requires that written records are kept. The committee notes in this regard that DPS has not undertaken a review of compliance with the Code since its inception in 2009, notwithstanding the requirement that such review occur at least annually.⁷²

3.40 In addition, the technical requirement in clause 33 that all printed images show the date of their printing appears not to have been complied with.

3.41 It also appears that the CCTV images were released to the employee without proper authority. Under clause 22 of the Code, the release of images to a member of the public or in a public forum may occur only with the approval of the President Officers, sought via the Usher of the Black Rod and the Serjeant-at-Arms. The reasons for approval are stated to include “in any other circumstances provided by law; or in

71 AGS advice, paragraph 69.

72 This matter is discussed further at paragraph 3.45.

relation to an insurance or legal claim”. This authority was not sought, in breach of the requirements of the Code.⁷³

3.42 If the purpose relied on is to provide evidence for civil proceedings, arguably the Presiding Officers’ approval should be sought before footage is first accessed; and it is certainly required under the Code prior to the release of the images.

3.43 The accountability required in an instrument like the CCTV Code of Practice is not a bureaucratic or technical requirement. The purpose of those accountability requirements is to ensure that decisions are made by the right people, and that they are made in any informed way. The CCTV system is managed by DPS, under the authority of the Presiding Officers, but its operation is necessarily constrained by the powers and immunities of the Houses and their members. When a conflict arises – or appears to arise – between the exercise of an administrative function and any aspect of those powers and immunities, the committee considers that determination of that conflict must begin with accountability to the source of the power being exercised.

3.44 Based on the above considerations the committee has concluded that the use of the CCTV system was not properly authorised under the Code of Practice. The committee’s observations may be useful in any review of the Code. It is convenient here to deal with some other matters relating to the Code.

Compliance reviews

3.45 Paragraph 8 of the Code of Practice provides that the DPS officer with chief responsibility for management of security, the Assistant Secretary, Building Services (or ASBS) “has executive responsibility for the overall management of the system, including managing adherence with the conditions laid down in this Code of Practice”.

3.46 The Privileges Committee asked for copies of each written report provided to the Security Management Board under section 46 of the 2011 Code of Practice, headed “Compliance Review”. The requirement is:

That compliance by DPS and AFP-UP staff will be subject to review. These reviews will be conducted as required and at least once per year. The ASBS will appoint an independent and suitably qualified person to undertake the review and provide a written report to the SMB.

3.47 DPS has confirmed that no compliance review had ever been undertaken. After the committee raised the matter, DPS engaged an independent auditor to undertake a review, which was expected to report in October 2014. The Acting Secretary provided the committee with a copy of the report on 28 November.

73 Although the Code defines a member of the public as “any person other than a parliamentary departmental or AFP-UP employee”, it plainly cannot be argued the images were provided to the employee to view “as part of her duties”. No other provision of the authorisations matrix can apply.

CCTV Policy Compliance Review

3.48 The report notes that the audit engagement did not consider “design of CCTV policies, guidelines and procedures” or “any matters in relation to the access and release of CCTV footage that are subject to a current review being conducted by the Privileges Committee”. [p.1] Notwithstanding those limitations, the review found instances of non-compliance of varying degrees in relation to 10 of the 40 paragraphs of the Code it examined. [p. 6] These included “significantly more” – that is, more than 100 more – saved images stored on the server than were listed in the Saved Images Register [p. 7] and multiple instances of incorrect or missing approval records for the release of images under the Code’s authorisation matrix, accounting for more than half of the 10 released images tested. [p. 8]

3.49 The committee considers these responses concerning.

Review of the Code

3.50 The committee also notes that the 2011 Code was scheduled for review in June 2014. Evidence was given at the estimates hearing in May that the review had not commenced. In its submission, in September 2014, DPS indicated that a new team established within its Security Branch would review the Code, although that team understandably currently has other priorities with significant changes to security arrangements occurring across Parliament House.

3.51 The committee notes that, in response to correspondence from the Chair, the President has indicated that he intends that the review of the Code will take into account the committee’s views, and involve broad consultation across the Parliament. The committee welcomes this commitment.

Camera settings

3.52 For completeness, it is noted that, in a visit to the operations room on 17 July 2014 committee members were shown the default position (or “home focus”) of the security camera outside Senator Faulkner’s office, which captured a complete view of the office door, and were also told that the camera and three others in proximity to and above the Senate entrance were recorded on a 24/7 basis, with recorded images retained for 8 weeks. Security officers demonstrated that the home focus of the camera and others like it could be reset so that it could continue to serve its security purpose while being less intrusive. After the visit, the Chair wrote to the President requesting that he and the Speaker consider instructing that the home focus for the camera outside Senator Faulkner’s office, and other cameras focussed and operating in a similar manner, be reset in the manner demonstrated to committee members. The President responded, indicating that the suggested adjustments had been made.

Interim approval arrangements

During the course of the inquiry, the committee also asked the President if the Presiding Officers would give consideration to reinstating “the substance of the original protocols” for access to and release of footage. The committee acknowledges that the Presiding Officers adopted the spirit of the committee’s request and agreed

that all requests for the release of footage should be put to the Presiding Officers for approval. The committee thanks the Presiding Officers for doing so.

Chapter 4

Conclusions and recommendations

4.1 Before turning to its conclusions, the committee makes some observations about matters raised during the inquiry

4.2 The CCTV system in Parliament House, like other security and information systems, is managed by DPS, under the authority of the Presiding Officers, on behalf of the Parliament. Its authority is clearly constrained by the powers, privileges and immunities of the Houses and their members. In any question of parliamentary administration, proper regard needs to be given to these matters.

Authority and accountability

4.3 As noted in the previous chapter, the committee considers that DPS has sought to use the CCTV system for a purpose which is not supported by the language of the Code of Practice. In doing so, DPS has set aside an important accountability mechanism – that of seeking the approval of the Presiding Officers for a policy change. The original protocols on management of recorded images were clear. They provided that recorded images could not be released or shown to anyone else without the approval of the Presiding Officers. One reason for this requirement was to ensure that the Presiding Officers could take advice as to whether questions of privilege were engaged, and how they ought be dealt with. When the Presiding Officers introduced CCTV security cameras into the Senate and House of Representatives wings, then President, Senator the Hon. Paul Calvert told the Senate:

The cameras in the corridors will only be activated during sitting hours if an alarm is triggered. After sitting hours motion detectors will activate them. Strict protocols have been developed to govern access to film images, and the Speaker and I will monitor these with the assistance of the Joint House Committee.⁷⁴

4.4 The current Code of Practice includes a similar process which requires certain requests for the use of images to be approved by the Presiding Officers and raised with the Usher of the Black Rod or the Serjeant-at-Arms, in each case allowing an opportunity for considered advice to be sought from the Clerks about any matter of privilege which may arise. This essential element of accountability is absent in the actions of DPS in this matter.

4.5 If the department considers that it requires the use of the parliament's security systems to pursue staff management issues, it should put that proposal to the Presiding Officers. The use of the system in this incident demonstrates the hazards here, and also demonstrates the high degree of accountability required in the management and use of the system. The failure to undertake compliance reviews of the Code over the past 5 years, and the areas of non-compliance apparent in the recent audit are of concern to the committee.

74 *Senate Debates*, 5 February 2003, p. 8565.

“due deference to parliamentary privilege”

4.6 The committee turns to the statement in the DPS submission that the investigation was undertaken with “due deference to parliamentary privilege”.⁷⁵ The statement was based on the Secretary’s response to the discovery of the contentious CCTV footage. The response has been described in a number of ways:

...the Secretary responded that ‘contact by individuals with parliamentarians is not something we monitor...’. Accordingly, the footage relating to the visit to the Senator’s office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator’s office...⁷⁶

...the relevant decision-maker (the Secretary) made a conscious decision *not* to take action in respect of Employee X’s approach to Senator Faulkner, by effectively instructing that DPS could not consider that conduct and had no interest in that matter.⁷⁷

Once the spectre of engagement with a Senator emerged, DPS advertently shut down any inquiry into the circumstances of the visit to the Senator’s office – a step apt to avoid any interference with parliamentary matters...⁷⁸

4.7 In the committee’s view this last claim of an advertent response would involve evidence of deliberation; accountability in the estimates hearing when questions arose, and to the Presiding Officers on whose behalf the system is managed; and communication of the decision to people affected by it, including the employee, who was not advised that the department “had no interest” in her contact with Senator Faulkner, and the Senator himself.

4.8 The submission states that there was no mention of the employee’s visit to the senator’s office in the brief seeking approval of a formal code of conduct process, nor in the brief appointing the investigator.⁷⁹ It is not clear why this information was omitted.

4.9 The committee is of the view that decisions about the application of privilege belong to the parliament and not to the department. Where matters which may involve questions of privilege arise, it is important that advice is sought on any privilege implications so that, depending upon that advice, any senator involved in the matter has an opportunity to consider whether to make an informed claim of privilege.

Legal advice

4.10 The question DPS sought to have answered in its legal advice was “the likely position a court would take to questions of parliamentary privilege and contempt

75 DPS submission, paragraph 3.

76 DPS submission, paragraph 21.

77 DPS submission, paragraph 40.

78 AGS Advice, paragraph 77.

79 DPS submission, paragraph 22.

arising out of the use of ...CCTV footage in a particular instance within the parliamentary precincts". As this committee has previously noted, the courts can have only a limited role in adjudicating contempt matters.⁸⁰ The Clerk of the Senate explains that:

...until a house imposes a penalty of imprisonment upon a person and the person is committed to custody...a court has no role in questions of contempt. It is entirely a matter for the House concerned. Even if a House does impose a penalty of imprisonment, the role of the court is limited to examining whether the ground for the imprisonment – the type of conduct complained of – was sufficient in law to amount to a contempt of a House. It does not involve re-running the investigation and adjudication of the allegations.⁸¹

4.11 As the Senate's delegate in contempt matters, the committee is required to determine the matters put before by assessing what action may be required to protect the Senate and senators against actions which might obstruct their work. This will often require different considerations than those a court might take into account.

4.12 The committee has noted an aspect of the legal advice which appeared to elevate administrative action under the Presiding Officers' authority above the powers of the parliament, setting aside the clear intention and well-established operation of the 'ordinary' law.⁸² The committee does not accept the advice. The administrative activities of the parliamentary service are necessarily constrained by the powers of the Houses.

4.13 As has also been noted, the advice and the submission did not deal extensively with the matter of improper interference, and with the specific concern about interference with the provision of information to senators. A large part of that advice – dealing with the transacting of business – was undermined by the documents provided to the committee on 11 November 2014.⁸³

Proportionate response

4.14 The committee questions whether the response of DPS to this incident has been proportionate, given that the incident that sparked the investigation related to a distressing note. In this, the committee is not suggesting that DPS ought not have commenced its investigation, but it appears that the department has gone to great lengths to pursue the matter, particularly when it is remembered (according to the evidence provided to the committee) that the CCTV system has not been used to investigate such staffing matters before. As far as the committee can tell, the information contained in the CCTV footage would have been of little assistance in the investigation.

80 See 150th report, at paragraphs 2.32 to 2.39.

81 Clerk of the Senate, Assessment of AGS Advice, p. 4.

82 See paragraphs 2.54–2.55 and 3.10–3.19.

83 See paragraphs 2.33–2.45.

Conclusions

4.15 When determining matters relating to contempts, the committee is required to have regard to the criteria in Privilege Resolution 3:

- (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.

4.16 The chief concern identified by the Finance and Publications Administration Committee and by Senator Faulkner was that use of the CCTV system to identify persons providing information to senators may interfere with the performance of senators' duties. If people apprehend that their interactions with senators are monitored, they may be deterred from providing such information, limiting the information available to senators and constraining their capacity to put matters before parliamentary committees. The other concern they raised was the question whether disciplinary action was taken against a person in connection with her providing information to a senator.

4.17 Having considered the criteria set out above, the committee has concluded that it should not recommend that a contempt be found. As both matters have arisen from the same conduct, the committee may deal with them here together.

critterion a

4.18 In both cases, the committee considers that paragraph (a) is satisfied, in that the committee considers action is required to protect the Senate, its committees and senators against improper interference.

4.19 In relation to improper interference, the committee returns to the position noted in chapter 1, that:

Any obstruction to the free flow of information may be regarded as having the effect of substantially obstructing senators in the performance of their functions.⁸⁴

84 Committee of Privileges, 67th Report, *Possible threats of legal proceedings against a senator and other persons*, September 1997, paragraph 2.12.

4.20 For the reasons set out in chapter 2, the committee considers that the use of CCTV images in this matter occurred without proper authorisation and in circumstances in which people may be understandably apprehensive about being monitored in similar circumstances in the future. The lack of accountability evident in the accessing of footage, in particular, is a matter of concern to the committee. The committee has considerable concerns about the evidence given about restrictions on the use of the images. The committee received the report of the KPMG CCTV Policy Compliance Review late in the inquiry and has not had the opportunity to consider it in detail. The committee intends to give further consideration to these matters.

4.21 The committee is required under this criterion to consider what action is necessary to protect the Senate, its committees and senators against acts which might obstruct them in the performance of their functions. The committee considers that action is required to remove any apprehension that the CCTV system may be used in an unauthorised manner. The committee makes a recommendation on this matter at paragraph 4.24, below.

4.22 In relation to the disciplinary matter, the committee remains concerned that the use of the system in this case has led to a situation in which decisions affecting the employee may have been influenced by information gained from the unauthorised use of the system. The committee does not make any finding here, but considers that the circumstances demonstrate the inherent risk in allowing officers access to CCTV material of the kind involved in this matter.

critterion b

4.23 It is clear to the committee that there is a suitable alternative remedy. The committee considers that corrective action lies within the power of the Presiding Officers, by initiating the development of a new Code of Practice which restores the focus on matters of security and safety, and emphasises accountability to the Presiding Officers and the Parliament, with appropriate regard for the primacy of the powers, and immunities of the Houses and their members.

Recommendations

4.24 The committee considers that there are serious difficulties with the interpretation of the existing Code of Practice, and gaps in accountability in the use of the CCTV system and **recommends** that the Code be reviewed through a process involving consultations with member and senators and other building occupants.

4.25 As noted in chapter 3, a particular concern is a lack of accountability in the approval process for accessing (rather than releasing) images, and the committee would see a more rigorous process, involving external accountability, as an essential element in any new regime.

4.26 The committee has similar concerns arising from the disregard for the powers, privileges and immunities of the parliament which has been on display during the investigation of this matter. The committee considers that senior officers in the parliamentary service should have a well-developed understanding both of the operations of the parliament and the limitations of their administrative authority. In particular they must give primacy to parliamentary powers in balancing the competing

priorities to which they may need to have regard. The committee **recommends** that senior officers in DPS involved in the administration of the CCTV system and other systems managed on behalf of the Parliament undertake some structured training to acquaint themselves with the principles of privilege.

4.27 The committee also noted the comment of the Clerk of the Senate that, because the Code itself does not make reference to the requirements of privilege, it is arguably unfit for purpose. The committee considers that any new Code should deal with such matters. However, senior officers in all of the parliamentary departments should be sufficiently well versed in privilege matters to be able to seek advice when questions of privilege arise, regardless of the provisions of a Code of Practice.

The committee recommends to the Senate that no finding of contempt be made in this matter. The committee further recommends:

- **That the Presiding Officers instigate the development of a new Code of Practice which restores the focus on matters of security and safety, and emphasises accountability to the Presiding Officers and the Parliament, with appropriate regard for the primacy of the powers, and immunities of the Houses and their members.**
- **That the review process involve consultations with member and senators and other building occupants, and give consideration to the matters dealt with in this report.**
- **That senior officers in DPS involved in the administration of the CCTV system and other systems managed on behalf of the Parliament undertake some structured training to acquaint themselves with the principles of privilege.**
- **That the attention of the Finance and Public Administration Legislation Committee be drawn to the matters set out from paragraph 2.2, under the heading *Contradictory evidence*, relating to the misleading evidence given at its estimates hearing on 26 May 2014.**

(Senator the Hon. Jacinta Collins)

Chair

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

Proof Committee Hansard

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

CLERK OF THE 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)