

Introduction

Terms of reference

On 1 April 2004 the Senate resolved that a Select Committee, to be known as the Select Committee on the Lindeberg Grievance, be appointed to inquire into and report, by 5 October 2004, on the following matters:

- (a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports; and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence; and
- (b) the implications of this matter for measures which should be taken:
 - (i) to prevent the destruction and concealment by government of information which should be available in the public interest,
 - (ii) in relation to the protection of children from abuse, and
 - (iii) for the appropriate protection of whistleblowers.

On 30 August 2004 the Senate extended the date for the presentation of the Committee's report to the day before the first sitting of the 41st Parliament, in effect to the 15 November 2004.

Background to the inquiry

The Select Committee on the Lindeberg Grievance was appointed on the motion of Senator Harris. The Committee is the fifth Senate committee to examine matters covered under the banner of the 'Lindeberg Grievance'.

The Lindeberg Grievance has its origins in the treatment of a whistleblower, Mr Lindeberg, and as such was first canvassed before a Senate committee in evidence to the Senate Select Committee on Public Interest Whistleblowing. Mr Lindeberg's whistleblower case and associated matters was one of several cases later considered in more detail by the Senate Select Committee on Unresolved Whistleblower Cases. It was later alleged that witnesses had deliberately provided misleading evidence to that inquiry.

These allegations, of deliberately providing misleading evidence possibly constituting a contempt of the Senate, were investigated by the Committee of Privileges in its 63rd

and 71st reports. Further allegations of misleading the Senate and possible contempt have now been made, giving rise to the current inquiry.

Conduct of the inquiry

Submissions and hearing

The Committee advertised the inquiry on 5 May 2004 in *The Australian* and on the Senate website and wrote directly to a number of stakeholders inviting submissions. Interested persons were invited to lodge submissions by the 31 May 2004, although the Committee agreed to accept several submissions after that date. Eight submissions were received and published by the Committee and are listed at Appendix 1.

As many of the persons and organisations that were in a position to assist the inquiry are, or were at the relevant times, office holders or public servants of the Queensland Government, the Committee invited the Queensland State Government to make a submission to the inquiry. The Queensland Government declined. Issues relating to this outcome are discussed in Chapter 1.

The Committee held one public hearing on 11 June 2004 in Brisbane. Three witnesses appeared before the Committee at that hearing. These witnesses are listed in Appendix 2.

The Committee had arranged another public hearing for 16 and 17 August 2004 at which it was proposed that a number of issues should be pursued with Mr Lindeberg and with other witnesses. That hearing did not occur because of the 2004 federal election. The Committee was therefore unable to complete its proposed program of public hearings and some issues could not be pursued to the satisfaction of all members of the Committee. The Committee had also sought copies of certain documents from the Queensland Government that had not been provided before the completion of this report.

Responses to evidence

During the inquiry serious allegations were made about individuals and certain organisations. The Committee considered that, had these allegations been made in another context, they could have given rise to legal action. Although the Committee had serious reservations about publishing the allegations, it decided to do so, on the basis that the Lindeberg Grievance could not be properly made out or properly investigated without publication of that material.

The Committee considered that the allegations amounted to 'possible adverse reflections' as defined in *Odgers' Australian Senate Practice*.³ The persons and

³ *Odgers' Australian Senate Practice*, 10th Edition, pp.435-436

organisations concerned were therefore given the opportunity to respond, in accordance with the Senate Privileges Resolutions.⁴

The responses to possible adverse reflections which the Committee agreed to publish are included in the documents tabled with this report. Some of the material contained in those responses has been used in this report.

Documents listed in the terms of reference

Three documents are specifically referred to in the Committee's terms of reference. Under the terms of reference, the Committee is required to have regard to:

... the fresh material that has subsequently been revealed by the Dutney memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into Abuse of Children in Queensland Institutions ...

The Dutney memorandum and Exhibits 20 and 31 are copies of memoranda prepared by the then management of the John Oxley Youth Centre (JOYC) and concern the actions and competence of named subordinate staff. The Committee had major reservations about publishing the documents because they contain strong criticisms of some staff who are not directly connected with this inquiry. Given its concerns, the Committee sought the advice of the Clerk of the Senate on the matter.

The Clerk's advice, in summary, was:

Against the minimal likely assistance to the committee's inquiry arising from the publication of the documents, there is the harm that would be done to persons referred to in the documents, and the diversion of the committee's inquiry by probable consequent disputes about the truth of those allegations.

In this situation, it would appear that the advisable course for the committee is not to publish the documents but to receive and consider them for the purposes of the committee's inquiry, that is, to consider them so far as they are relevant to the question of whether misleading evidence was given.⁵

The Committee accepted the Clerk's advice and has not published the documents. The Clerk's letter of 18 May 2004 may be found at Appendix 3.

Structure of the report

Chapter 1 of this report discusses a number of procedural issues related to the terms of reference and conduct of the inquiry. Chapter 2 sets out an abridged history of the events, issues and previous inquiries associated with the Lindeberg Grievance. In Chapter 3 the Committee reports on term of reference (a), addressing the allegations

⁴ Resolution 1(13) of Resolutions agreed to by the Senate on 25 February 1988, in *Odgers' Australian Senate Practice*, 10th Edition, p.573

⁵ Clerk of the Senate, *Correspondence*, 18 May 2004

that false and misleading evidence, possibly constituting contempt of the Senate, was provided to previous committee inquiries. Chapter 4 reports the Committee's findings regarding term of reference (b).

Evidence to the inquiry focused on part (a) of the terms of reference. The committee received only one submission that specifically related to term of reference (b). Given the evidence, and that part (b) of the terms of reference is contingent on part (a), the report focuses principally on term of reference (a).

Acknowledgement

The Committee wishes to thank all those who assisted with this inquiry.