

Was Mr Grech in a fit state to give evidence?

4.55 A second matter raised by Senator Heffernan in his correspondence to the President of the Senate dated 7 August 2009 was 'the treatment of Mr Grech by the Treasury Department before he gave his evidence to the Committee':

According to the Audit Office report and the statement provided to the Audit Office by Mr Grech, Mr Grech was suffering from serious health problems and extreme work pressure at the time of his evidence to the Senate Committee.

I believe that this raises the question of whether adverse treatment of a witness which could impair the ability of the witness to properly give evidence to a Senate Committee may also be treated as a contempt. I believe that it would be open to the Senate to regard such treatment of a witness as a contempt. If the facts are as stated by Mr Grech, the Department allowed him to represent the Department as a principal witness at a hearing concerning a significant government program. Although the Department knew of his difficult state of health and the work pressure under which he was operating. This could well be regarded by the Senate as a failure to adequately respond to the requirement of a Senate Committee for information, and an interference with the free exercise of a Senate Committee of its authority within the meaning of paragraph (1) of Privilege Resolution No. 6.

In view of the above information and the way that this may have influenced the behaviour and evidence given by the witness to the Senate Economics Legislation Committee on 19 June 2009, it is likely that these actions may have directly influenced the nature of evidence received and the obvious adverse actions by the media, the public and officials towards Mr Grech as a consequence of his evidence.⁵⁴

4.56 Treasury provided a response to this suggestion which is reproduced in full as follows:

62. While the formulation of an allegation of contempt in this way is novel, Treasury accepts that it is possible as a matter of theory that a prospective witness may be the subject of adverse treatment by a third person such that he is unable to properly give evidence to a Senate Committee, and thus the third party is guilty of contempt.
63. Mr Grech's case is not such a case.
64. Treasury does not accept that Mr Grech suffered from any physical or mental condition which prevented him from giving proper assistance to the Senate Committee. Treasury has not seen any evidence which suggests that Mr Grech was suffering from any ailment which prevented him, had he wished to, from providing the Committee with honest and rational assistance in relation to the Ozcar program.

⁵⁴ Senator the Honourable Bill Heffernan, correspondence to the President of the Senate, dated 7 August 2009.

65. Senior Treasury management were aware of the physical health condition of Mr Grech. However, at no point did Mr Grech raise concerns that his physical health condition would compromise his ability to perform his work duties. On the contrary, during the period leading up to the Senate Inquiry, Mr Grech actively sought higher level positions within the Treasury, particularly at the General Manager level. He also agreed to take on additional work responsibilities, and volunteered for a range of corporate tasks. In his response to the ANAO report, Mr Grech states that he returned to work prematurely after being hospitalised in early February 2009. However, Mr Grech was advised by email on 6 February 2009 that there was "no rush to come back". Mr Grech returned to work on 16 February. On his return, Mr Grech's workload was immediately reduced. Prior to being hospitalised, Mr Grech was heavily involved in the development of the Australian Business Investment Partnership (ABIP), including attending meetings and negotiations with the major banks. This work ceased on his return.
66. Accordingly, in Treasury's submission, appropriate accommodation of Mr Grech's physical ailment was made and there is no reason to think that it interfered in any way with the evidence he gave to the Senate committee on 19 June 2009.
67. In relation to the claim that Mr Grech was under significant work pressure to a point that he was mentally compromised in the evidence he gave, Treasury rejects such a claim. Mr Grech was provided with appropriate assistance and support as required in relation to OzCar. Contrary to the claims made by Mr Grech in his response to the ANAO report, Mr Grech did not deliver on OzCar alone. As a non-government trust facility, the bulk of the work to establish OzCar was, and was always intended to be, undertaken by the private sector. To assist in the establishment of the facility, Credit Suisse were engaged by the Treasury in November 2008 to provide all necessary services to establish OzCar. Credit Suisse devoted considerable expertise, experience and resources (a dedicated project team) in order to develop and finalise the OzCar structure.
68. A range of other third parties also provided crucial skills and resources in order to establish the facility, including two separate legal firms, and Perpetual Trustee (to perform the role of trustee for OzCar).
69. Mr Grech's role in the Treasury was to instruct Credit Suisse and the other parties as appropriate, consistent with the Government's policy direction. Treasury does not accept that Mr Grech was under any special pressure from his duties at Treasury. If he was, he did not bring it to his supervisor's attention as a problem. To the extent that Mr Grech involved himself in the micro-management of some dealer's problems, that involvement and any pressure it may have placed on Mr Grech, appears to have been motivated by political affiliation rather than any requirement of Treasury's. Indeed Mr Grech's own assessment of his health was that he would not let it