

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**POSSIBLE FALSE OR MISLEADING EVIDENCE
BEFORE A SENATE ESTIMATES COMMITTEE -
DEPARTMENT OF DEFENCE
PROJECT PARAKEET**

(15TH REPORT)

MARCH 1989

MEMBERS OF THE COMMITTEE

Senator Patricia Giles (Western Australia), Chair

Senator John Black (Queensland)

Senator Bruce Childs (New South Wales)

Senator John Coates (Tasmania)

Senator the Honourable Peter Durack, Q.C.
(Western Australia)

Senator Janet Powell (Victoria)

Senator Baden Teague (South Australia)

The Senate
Parliament House
CANBERA A.C.T. 2601.

REPORT

Introduction

1. On 5 December 1988, the President of the Senate (Senator the Honourable Kerry W. Sibraa) advised the Senate that, following consideration of a matter of privilege raised by Senator MacGibbon, he had determined that a motion relating to the matter should have precedence in accordance with the procedures contained in the privilege resolutions of 25 February 1988. The President's statement is at Appendix 1. Accordingly, Senator MacGibbon thereupon gave notice of the following motion:

Whether false or misleading evidence was given to a Senate Estimates Committee in relation to the Department of Defence Project known as Project Parakeet, and whether a contempt of the Senate was committed in the giving of that evidence.

The motion was agreed to by the Senate on 6 December 1988.

2. As the President indicated in his statement when giving the motion precedence, the matters giving rise to the Committee's inquiry were set out by Senator MacGibbon during debate on Appropriation Bill (No.1) 1988-89 on 29 November 1988. The speech is at Appendix 2 to the report.

Conduct of Inquiry

3. The Committee of Privileges decided to invite Dr McIntosh, the officer who gave evidence to Estimates Committee B in April 1988, and Major General Francis, who appeared before Estimates Committee D, together with Dr McIntosh, in October 1988, to make submissions to the Committee on the question before it. The submissions are at Appendix 3 to the report.

4. The Committee, through the written submissions, has available to it the circumstances surrounding the evidence placed before the Estimates Committee in April 1988. It further notes the following comments made by Dr McIntosh in his submission of 2 February:

While the discussions of the project were of a partial nature so as not to preempt Ministers and were clearly unsatisfactory to Senators [emphasis added], I do not believe that false or misleading evidence was given by what I said (as opposed to the paraphrasing by others of what I said) as to the facts or status of the project.

If Senators were misled, it was certainly not deliberate on my part and I can only apologise for any deficiencies in the phrasing of my responses, which did not make the position, as outlined in this submission, sufficiently clear.

Conclusion

5. It would have been helpful to the Senators concerned if the officer had been more forthcoming in

answering the questions put to him, but the Committee of Privileges accepts the explanation and apology contained in the submission before it.

However, the Committee makes the following observations:

6. The submissions of Dr McIntosh and Major General Francis have presented the factual background at the time of the Estimates hearings and technically the answers that were given to the Committee were correct.

7. We appreciate the problem faced by public servants in the position of Dr McIntosh at the time of the hearings, but it is fair comment that he was an experienced public servant and quite familiar with dealing with Ministers and Members of Parliament. He should have been able to have overcome the problem without leaving the Senators in the state of dissatisfaction which was created by his unhelpful approach.

8. Although public servants should not be pre-empting the decisions of Ministers or disclosing advice given to them, there is no reason why information should not be volunteered when it is quite clear that Senators are seeking more information than has been made available or if they seem confused by such information. In this case there had been news reports which had given Senators some inaccurate information about the situation with Project Parakeet. Senators may also have been given inaccurate information from other sources.

9. If Dr McIntosh had been as helpful to the Senate Estimates Committee as he has been to the Privileges Committee this whole exercise would have been avoided.

Report

10. The Committee has concluded that there was no intention to give any false or misleading evidence to a Senate Estimates Committee in relation to the Department of Defence project known as Project Parakeet. It follows, therefore, that no contempt of the Senate was committed in the giving of that evidence.

Patricia Giles
Chair

March 1989

APPENDICES

**DEPARTMENT OF DEFENCE:
PROJECT PARAKEET**

Matter of Privilege

The **PRESIDENT**—Pursuant to the procedures laid down by the resolutions of the Senate of 25 February 1988, Senator MacGibbon has raised with me a matter of privilege. The matter in question was set out in considerable detail by Senator MacGibbon during the debate on Appropriation Bill (No. 1) 1988-1989 on 29 November 1988, and involves an allegation that misleading evidence was given to Estimates committees in relation to a Defence procurement program known as Project Parakeet.

The resolutions of the Senate declare that the intentional giving of any evidence which is false or misleading in any material particular is a contempt. Under the resolutions I am required to determine whether a motion relating to the matter should have precedence, having regard to the criteria set out in the resolutions. In previous statements on matters of privilege I have indicated the way in which I applied the criteria contained in the resolutions.

I consider that the matter raised by Senator MacGibbon is capable of being regarded by the Senate, if the facts are found as alleged by Senator MacGibbon, as meeting the criteria provided in the resolutions, namely that the Senate's powers should be used only where it is necessary to provide reasonable protection against improper acts tending substantially to obstruct the Senate, its committees or senators. It is certainly not a trivial matter within the terms of the criteria, and there does not appear to be any readily available other remedy. I have therefore determined that a motion relating to the matter should have precedence in accordance with the procedures contained in the resolutions.

APPENDIX II

Appropriation Bill (No. 1) 1988-89
Speech by Senator D.J. MacGibbon
29 November 1988

Senator MacGIBBON (Queensland)
(5.00)—We have a very long speaking list in this second reading debate on the Appropriation (Parliamentary Departments) Bill 1988-89, the Appropriation Bill (No. 1) 1988-89, the Appropriation Bill (No. 2) 1988-89 and the Advance to the Minister for Finance 1987-88. I cannot help but comment that the Government mismanages the program in this chamber to the same extent that it mismanages the economy. Here we are, on 29 November, without even the second reading debate on the Appropriation Bills completed. In all the years I have been here I have never known such a situation. It is no-one's fault but the fault of the Government. It is not the fault of honourable senators but the fault of the Manager of Government Business in the Senate (Senator Robert Ray) and the Leader of the Government in the Senate (Senator Button). They could not run a chook raffle at a church fete.

Senator Puplick—They would not go to church.

Senator MacGIBBON—That is right; they would not go to church. They would never take an oath of allegiance. I seem to remember one incident in 1975 when a government was thrown out because it could not get its

money by 11 November, as a very good question in this chamber some days ago pointed out. My colleagues on this side of the chamber have done a very good job in exposing the shortcomings of the Government with respect to its proposed expenditure in the year ahead.

I do not want to use the short time available to me to canvass the expenditure of the Government; rather I want to look at something that is relatively rarely dealt with in this chamber—that is, how information relating to the expenditure of money is given to the Parliament. It is very important, in fact it is crucial, that the Parliament be fully informed. The Government is responsible and accountable for all the expenditures that are made, for it is money that is taken from the community, not government money, that is spent annually. The senators in this chamber have a special right to know how that money is being spent because they are the elected representatives of the community, and to some degree we all bear a responsibility for the accountability of the expenditure. One of the great prerogatives of government is that it can raise whatever money it wants in the form of taxes and other charges. It is government's equal prerogative to spend that money in any way it sees fit. If the community does not like what the Government is doing with respect to raising and spending money the recourse is through the ballot box at the next election.

But the other side of the coin, balancing the privilege of raising money and spending it, is accountability. There is an absolutely inescapable obligation on the Government to account for every penny it spends. The Federal Government, whatever its political orientation, does that. An elaborate system of checks and balances is built into the Federal system to make it so. We, as individual senators, have a part in it whether we are in government or in opposition.

I contrast this with the actions of the Government in my State of Queensland, where the community has no assurance of accountability of the expenditure of funds other than the word of the Premier of the day. The Queensland State Parliament has no way of exploring the expenditure made by executive government, the Ministry or the departments of state beyond the limits which

are permitted by the executive government of the day. That does not apply in this chamber and in the Federal Parliament.

I re-emphasise the central point that, in return for the right to impose and collect taxes for the betterment of society as a whole, a government has an inalienable obligation to account for the expenditure of those taxes. In the Federal Parliament there are a number of ways in which this comes about. There are extensive Budget papers; there are the Appropriation Bills; there is the Joint Committee on Public Accounts; and there are Senate Estimates committees. The Senate Estimates committees cover every department of the Federal Government and examine the proposed expenditure for the year. Representatives of each department are required to appear before the relevant committees to answer questions put by senators about expenditure. Departmental officers are obliged to answer fully and accurately questions relating to proposed or past expenditure, but they are not required to explain the reasons for that expenditure. That is the responsibility of the government of the day. The government of the day decides where the money is spent and it is for that government to justify that spending to the electorate. But it is for the public servants to account for the amounts that are spent and accurately reveal them to the Parliament.

It is necessary to have Estimates committees because it is simply impossible in one single document to cover the expenditure of the annual Budget of the Federal Parliament, which is now in excess of \$70 billion a year. The limitations on Senate Estimates committees are the knowledge of the individual senators about the particular departments and their competence at questioning the public servants. Another limitation can be the degree of cooperation of the public servants with the Parliament.

Having now completed my eleventh year as a member of an Estimates committee for the main annual Estimates, I have no hesitation in saying that the quality of evidence given to committees varies considerably from department to department. Some departments are open and friendly; many others require some degree of persistence and determination, to put it euphemistically, to elicit the desired information. While it is desirable,

of course, that information be freely given, it is an absolute requirement that information be accurate and not misleading.

I have had occasion in the past four or five years to comment on the conduct of witnesses with respect to the nature of their evidence. One of the matters that I have commented on is the increasing politicisation of witnesses over the past 10 years. Going back in my files I found that in one of my speeches I said:

Without going deeply into the matter, I want to talk about the politicisation of the senior levels of the Australian Defence Force. I have referred to this matter in the past in this chamber. The only point I want to add is that I emphasise that I am not talking about the politicisation in party political terms. That is not part of my argument at all. What I am saying is that there is a very great danger that the advice that the Parliament and the executive Government get from the professionals in the service is increasingly tailored to what they perceive to be the view of the government of the day.

On another occasion some three or four years ago, on the same topic, I said:

The effect has been that far too many witnesses who have appeared before us have given us answers that are obstructive, evasive and at times misleading—in an intentional way—and some of the witnesses have been inaccurate.

So my concern about the quality of evidence given to the Parliament goes back quite a few years.

When witnesses appear before Senate Estimates committees they are appearing before the Parliament and the people of Australia because they, as public servants, are accounting to the people of Australia for the expenditure of public moneys. It is not for them to be obstructive and evasive, and least of all misleading or dishonest. The parliament, irrespective of parties, will impose the requisite censure and discipline on those who transgress these latter requirements.

The central point of my speech this afternoon concerns the evidence of one witness during the estimates for the Department of Defence this year which, in the most favourable light, is grossly and wilfully misleading and, at worst, is dishonest. Some brief background material is required before going into details. The Australian Department of Defence has been engaged for at least a decade in developing a new secure communications network. The system consists of three blocks.

The first block is called Project Raven, which deals with the design and production of a whole family of mobile radio sets and message gear for use in the field. The second block is project Parakeet, which is the next step in the communications equipment chain, again for use in the field. Finally there is Project Discon, which is a fixed secure communications system around the country between defence headquarters and establishments—almost like a private Telecom network for the Services, with the exception that it is secure against eavesdropping and interdiction.

The first project, project Raven, is proceeding reasonably satisfactorily. Apart from the fact that project Discon seems to be moving at a very slow pace, almost at glacial pace, it seems to be coming along satisfactorily, but project Parakeet is not going well. It is common knowledge to anyone who takes an interest in these matters that for over a year project Parakeet was in big trouble, so much so that in the early part of this year a number of accounts in the press listed some of the difficulties of the projects. Some of those articles said that the next stages of the contract would not be automatically awarded to the prime contractor, as is the usual practice, but would be open for public tender. It is against this background of considerable information on the public record—information, I might add, that has subsequently been proved to be correct—and of considerably more detailed information which was available to a number of us privately, not from Government sources, I might add, that questions were asked of the Department of Defence at the Estimates Committee hearing on 21 April 1988. I seek leave to incorporate in *Hansard* the relevant passages from the *Hansard* of 21 April 1988.

Leave granted.

The passages read as follows—

Senator NEWMAN—What will happen about Project Parakeet? Will that be affected by any of these financial decisions in this subdivision?

Dr McIntosh—There are not proposals in the additional estimates that are affected by Project Parakeet.

Senator NEWMAN—Is the contract going ahead?

Dr McIntosh—At this stage there are no decisions that would affect additional estimates.

Senator NEWMAN—That is not what I asked. Does the major equipment project items of a saving of \$157.5m, affect Project Parakeet? Do you mean that it is not included in there? There is no reduction, slippage, rescheduling or whatever we might like to call it?

Dr McIntosh—No, Senator, not in these additional estimates.

Senator NEWMAN—So the news report in the *Sunday Telegraph* of 27 March that Parakeet was in doubt was not accurate?

Dr McIntosh—I think that speculation of that kind is premature.

Senator NEWMAN—You make me more suspicious than ever by your answers. Do you realise that?

Senator MacGIBBON—Is it not true that there are considerable technical problems with Parakeet?

Dr McIntosh—I think that is an overstatement.

Senator MacGIBBON—Is it not true that one of the major subcontractors is in difficulty?

Dr McIntosh—I think that, too, is an overstatement.

Senator NEWMAN—Is the project way over budget?

Dr McIntosh—At this stage, no. At this stage the completion of the most recent phase has occurred and it has not been way over budget. We are now examining proposals for the next phases. We have in front of us a set of proposals from the contractor for the next phases. Data is being considered within the Department for a recommendation to Ministers.

Senator NEWMAN—Are those proposals over budget?

Dr McIntosh—At this stage that is not yet clear.

Senator NEWMAN—Is it behind schedule?

Dr McIntosh—Not significantly, no. We are actually considering what this last phase means to us and where we proceed from here. Until we have made a recommendation to Government on what those costs are, it is difficult to say anything else.

Senator MacGIBBON—I would like to go back to Parakeet and to Dr McIntosh's assertions that things are going well there. Do you categorically deny that there have been problems with the Scanlinavian or Danish sub-contractor for the switch gear for that program?

Dr McIntosh—I am sorry, that is not what I said. I said that we had completed a phase and we were now examining the proposals for the next phase and those proposals will be put to the Minister.

Senator MacGIBBON—One of the questions put to you earlier was to the effect as to whether there were any problems with Parakeet and the answer you gave implied that there were no problems with Parakeet.

Dr McIntosh—I said that those assertions that you had made had been exaggerated. I did not say there had been no problems. In a development program of this kind, of course there have been. But at this stage we have proposals in front of us for continuing the project which are being considered.

Senator MacGIBBON—I put it to you that there are serious technical problems with Parakeet. Is that true or false?

Senator RICHARDSON—Dr McIntosh has now answered the question three times. I wonder how many times he is expected to answer it? He has said that there are no significant problems. He has said it a couple of times now. I think that that is probably enough.

Senator MacGIBBON—So long as Dr McIntosh realises that that is the position on the record.

Senator RICHARDSON—I am sure that he recognises that it is on the record. He has had to repeat it several times. He seems happy to live with it.

Senator HILL—What is the timetable for project Parakeet?

Dr McIntosh—We would expect to be putting a proposition to the Government shortly for the next phases. Shortly might mean within the next week or two.

Senator HILL—For the next phase?

Dr McIntosh—Yes.

Senator HILL—What is the next phase?

Dr McIntosh—We are going through a development program. We have just completed the third phase. We are looking at completing phase 4 which is a continuation of the development before we enter phase 5, which is the production equipment.

Senator HILL—Do you have in mind the equipment being in operation by a particular date? Are you, hopefully, working to a particular timetable?

Dr McIntosh—Yes, of course.

Senator HILL—What sort of date?

Brig. Farry—The mid-1990s.

Senator HILL—Has that date been set back as a result of technical difficulties?

Dr McIntosh—At this time, no.

Senator HILL—Was it always intended to be in operation in the mid-1990s?

Dr McIntosh—Yes, and as you would appreciate from that answer, in a development program of this kind where there was no equipment readily available off the shelf that met our requirements, it required us to undertake a staggered—staged, if you like—phase of development. The precise timing is then as vague as the mid-1990s.

Senator HILL—There has not been any slippage from your point of view in the development program in that you intended to be in operation in the mid-

1990s from the beginning of the project and that is still, you believe, the likely date.

Dr McIntosh—That is the date on which we are still planning, yes.

Senator HILL—Are reports in the Press that the project is likely to be reopened for tender untrue?

Dr McIntosh—I am afraid I should not comment on that until propositions of whatever kind for the continuation of the program have been taken by Government.

Senator HILL—I do not quite understand that answer.

Senator RICHARDSON—It implies only that the Government has not made a decision on the next phase, I assume.

Senator HILL—Is that what you mean?

Dr McIntosh—Yes, exactly.

Senator HILL—But the Press report which talks about a phase being likely to be reopened for tender suggests that tenders had been sought and perhaps awarded. Was that for a particular phase?

Dr McIntosh—We have completed phases 1, 2 and 3. At the end of phase 3 the contractor is obliged to put forward proposals for phases 4 and 5 and those proposals are now being considered. When they have been considered recommendations will be put to Government and the Government will make decisions.

Senator HILL—Have tenders been sought for phases 4 or 5?

Dr McIntosh—'Tenders' implies that we sought open tenders. What we sought were contractual commitments from the contractor as to how he would see continuing phases 4 and 5. There was a contractor who completed phase 3 and he has been asked to give us prices for phases 4 and 5.

Senator HILL—Obviously, if you have not submitted it to Government contracts have not been entered for either of those two phases.

Dr McIntosh—Phases 4 and 5 we have yet to commit, of course.

Senator HILL—So, therefore, reference to having to reopen a tender would appear to be incorrect?

Dr McIntosh—I am sorry; I have not said that at all. All I have said is that we have sought propositions from the current contractor, and the options that relate to those propositions will be put to government.

Senator MacGIBBON—I thank the Senate. I give the Senate an assurance that those passages from which I will be quoting and a subsequent one which I will also seek to incorporate in *Hansard* do not create any false impression by extracting answers out of context. The witness who answered for the Department of Defence on this occasion was Dr McIntosh. He is a very senior official. He

is the Chief of Capital Procurement. Questioning began with a question from Senator Newman as to whether Project Parakeet would be delayed or affected. I quote:

Senator NEWMAN—What will happen about Project Parakeet? Will that be affected by any of these financial decisions in the subdivision?

Dr McIntosh—There are not proposals in the additional estimates that are affected by Project Parakeet.

Senator NEWMAN—Is the contract going ahead?

Dr McIntosh—At this stage there are no decisions that would affect additional estimates.

Senator NEWMAN—That is not what I asked. Does the major equipment project items of a saving of \$157.5m, affect Project Parakeet? Do you mean that it is not included in there? There is no reduction, slippage, rescheduling or whatever we might like to call it?

Dr McIntosh—No, Senator, not in these additional estimates.

Senator NEWMAN—So the news report in the *Sunday Telegraph* of 27 March that Parakeet was in doubt was not accurate?

Dr McIntosh—I think that speculation of that kind is premature.

Senator NEWMAN—You make me more suspicious than ever by your answers.

Those answers were quite evasive. I then asked:

Is it not true that there are considerable technical problems with Parakeet?

And that was a leading question. Dr McIntosh replied:

I think that is an overstatement.

I then asked:

Is it not true that one of the major subcontractors is in difficulty?

One of the major subcontractors was in difficulty, and that was common knowledge. Dr McIntosh replied:

I think that that, too, is an overstatement.

And so it goes on—evasion and misleading answer after misleading answer. A little later Senator Newman asked:

Is it behind schedule?

Dr McIntosh replied:

Not significantly, no.

I ask the Senate to mark those words. Remember that this is not more than seven months ago, on 21 April 1988. The impression was clearly conveyed to the Senate Estimates Committee that the program was

going normally with only the usual sorts of hitches and glitches that are inseparable from a new technology. It is clearly established by Dr McIntosh's answers that the program was not late, because in direct answer to the question from Senator Newman, 'Is it behind schedule?', he said, 'Not significantly, no'. Clearly we were given no indication that the project was over budget. We were given no indication that there were management problems.

I now turn to the main Estimates of 10 October 1988, only six months later. I seek leave to incorporate the relevant passages from the Estimates *Hansard*.

Leave granted.

The passages read as follows—

Senator MacGIBBON—Let us move to Parakeet. What is the timetable on that?

Major-Gen Francis—I expect that there will be overall about a year's delay on Parakeet. We expect to be seeking approval for parts of Parakeet in the next Budget.

Senator MacGIBBON—Where are we precisely with it from a contractual point of view?

Major-Gen Francis—At this point, the contract for phase 3 is complete and we will be seeking endorsement of phase 4. Exactly in what form we are still debating. We are not absolutely certain of the acquisition strategy that we will use in the near future for approval in next year's Budget. So there is no contract running at this time.

Senator MacGIBBON—No, but will it go to tender?

Major-Gen Francis—Yes, it will, to open tender.

Senator MacGIBBON—Is it not a fact that the Department is completely disenchanted with Racal and has no confidence in it, and that is why it is going to tender?

Major-Gen Francis—It is a fact that we are not continuing with Racal as the sole supplier, which was our original intention. There are a number of reasons for that.

Senator MacGIBBON—Because of the performance of the equipment?

Major-Gen Francis—Partly performance. The principal reason was that the cost it came in with as a tender for the next phase did not relate back to what the company predicted, and the price that it predicted was one of the significant factors upon which it was chosen in the first place. It would not be fair to other possible suppliers to continue with Racal under those circumstances.

Senator NEWMAN—What were the other reasons? You said it was the principal reason.

Major-Gen Francis—We had some management problems with the company. It was in the process of sorting those out and we really had not got to the point of proving the point one way or the other when it put in its estimate of the next phase. At that point, we decided that there was no point in continuing with Racal for the next phase. So the company just continued and completed its work on phase 3.

Senator MacGIBBON—This Committee went into this in some detail last year. We were assured by Dr McIntosh that there were no problems with the performance of the contractor at all.

Dr McIntosh—That is not what you were assured. With respect, Mr Chairman, I too have bought my transcript and that was not what you were assured, with respect, Senator.

Senator MacGIBBON—I put it to you, Dr McIntosh, that you misled the Committee there.

Dr McIntosh—I do not believe so.

Senator MacGIBBON—You were asked a question by Senator Newman and you said, 'At this stage there are no decision that would effect additional estimates', implying that things were going well. Later on I asked you if it were true that there were considerable technical problems with Parakeet and I later on went on to the switching gear. You told me that was a wild exaggeration. The general tenor of your replies to this Committee was that there were no difficulties which hazarded in anyway the future development of project Parakeet.

Dr McIntosh—With respect, Senator, that is not at all what I said and I do not believe the transcript shows that. What I said was that there were no technical problems, and as you have heard from General Francis—

Senator MacGIBBON—Is it not a fact that there were problems with the subcontractor with the switch gear?

Dr McIntosh—I can turn to Major-General Francis for the detail if you wish, but that was not a major concern at this stage, remembering that phase 3 as I outlined to you was paper studies and we were not into the building of technical equipment at that stage. But—

Senator MacGIBBON—I put it to you that it was a major concern of the Army. It might not have been of the civilian component, but it was certainly was of the Army.

Major-Gen. Francis—The concern of the Army at the time was that Racal would not guarantee the performance of that particular equipment in certain areas. They were in the process of sorting that out when we decided not to proceed because of the cost issue. I am pretty confident actually it would have been sorted out. It was not that the equipment necessarily would not perform, it was that they were not giving us a guarantee that it would.

Senator MacGIBBON—The position at the moment is that we are at least a year behind schedule.

Major-Gen. Francis—We will lose about a year, yes, which is preferable to proceeding down an unsatisfactory path.

Senator MacGIBBON—Quite. Parakeet also happens to be an essential part of the communications net.

Major-Gen. Francis—I certainly support that.

Senator MacGIBBON—Thank you.

CHAIRMAN—Dr McIntosh, you were in the process of giving an answer there and you were interrupted. Are you finished to your satisfaction?

Dr McIntosh—I think the issue has been well and truly covered.

Senator MacGIBBON—I thank the Senate. On 10 October, under the capital procurement section, I was asking questions about Project Raven. After dealing with Project Raven, I moved to Project Parakeet. I asked:

What is the timetable on that?

Dr McIntosh and the Chief of Army Materiel, Major-General Francis, were at the table. Major-General Francis answered first. In answer to my question, which implied 'Is Project Parakeet on schedule or not?'—and remember that this is six months after we had an unqualified assurance from Dr McIntosh that it was on schedule—Major-General Francis said:

I expect that there will be overall about a year's delay on Parakeet. We expect to be seeking approval for parts of Parakeet in the next Budget.

I further quote:

Senator MacGIBBON—Where are we precisely with it from a contractual point of view?

Major-Gen. Francis—At this point, the contract for phase 3 is complete and we will be seeking endorsement of phase 4. Exactly in what form we are still debating. We are not absolutely certain of the acquisition strategy that we will use in the near future for approval in next year's Budget. So there is no contract running at this time.

Senator MacGIBBON—No, but will it go to tender?

Major-Gen. Francis—Yes, it will, to open tender.

Senator MacGIBBON—Is it not a fact that the Department is completely disenchanted with Racal—which is the prime contractor—

and has no confidence in it, and that is why it is going to tender?

Major-Gen. Francis—It is a fact that we are not continuing with Racal as the sole supplier, which was our original intention. There are a number of reasons for that.

Senator MacGIBBON—Because of the performance of the equipment?

Major-Gen. Francis—Partly performance. The principal reasons was that the cost it came in with as a tender for the next phase did not relate back to what the company predicted, and the price that it predicted was one of the significant factors upon which it was chosen in the first place.

Senator Newman asked:

What were the other reasons? You said it was the principal reason.

Major-General Francis answered:

We has some management problems with the company.

I do not wish to take the time of the Senate going through those points, although I will refer back to them in a few minutes. Six months after we had an assurance that there was no delay on the program contemplated we are told categorically that there is at least a 12-month delay coming. We were given no indication in April that the management and technical side of the program was not proceeding satisfactorily, yet Major-General Francis in evidence affirmed that there were major management and technical problems with the company as well as financial ones in so far as it was not meeting the contract. In other words, all the reports that were in the press in the early part of this year have been confirmed in the latter part of the year, in the face of contradictions from a witness from the Department of Defence.

Everyone who had an interest in this field knew that the prime contractor, Racal, was experiencing significant managerial problems within its own company and that those problems were flowing on to the way it was managing this very large program. Everyone knew that there were very considerable technical problems in the development of the equipment, not the least with the Scandinavian subcontractor who was developing the switchgear and simply could not deliver. In Department of Defence contracts of this nature, once a prime contractor has been selected and his performance is satisfactory, although the stages are let sequentially, the prime contractor will almost always be granted the successive phase because his performance has been acceptable to the Department in the early ones. Everyone knew that, although it was a five-phase contract, at the end of phase 3 it would go to open tender

because the Department was not satisfied. That information was withheld from the Committee by the witness. The Senate has certain rules as to the conduct of witnesses. Only this year, on Wednesday 24 February 1988, on the matter of parliamentary privilege, resolutions covering the appearance of witnesses were passed by this chamber. Resolution (12) deals with offences by witnesses, et cetera. It reads:

(12) A witness before the Senate or a committee shall not:

- (a) without reasonable excuse, refuse to make an oath or affirmation or give some similar undertaking to tell the truth when required to do so;
- (b) without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so; or

this is the relevant one in the case of Dr McIntosh—

- (c) give any evidence which the witness knows to be false or misleading in a material particular,

or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

There is a charge to be laid against the good doctor that he has misled the Senate on a very important point. In April, when asked whether project Parakeet was behind schedule, Dr McIntosh responded 'Not significantly, no'. When it was put that there were serious technical problems with the project the Minister for the Arts, Sport, the Environment, Tourism and Territories (Senator Richardson), who was at the table, stated that Dr McIntosh had already said that there were no significant problems. This characterisation of Dr McIntosh's answers was accepted by the Committee. As the transcript shows, I gave Dr McIntosh the opportunity to resile from his previous assurances that there were no problems with this program because I knew very well there were highly significant problems. I gave him that chance, as the *Hansard* shows.

I asked:

I put it to you there are serious technical problems with Parakeet. Is that true or false?

I cannot put it more clearly than that: 'Is it true or false?'. Senator Richardson responded:

Dr McIntosh has now answered the question three times. I wonder how many times he is expected to

answer it. He has said that there are no significant problems. He has said it a couple of times now. I think that is probably enough.

I gave Dr McIntosh his chance. I said:

So long as Dr McIntosh realises that that is the position on the record.

There was not a word from Dr McIntosh. Senator Richardson intervened:

I am sure that he recognises that it is on the record. He has had to repeat it several times. He seems happy to live with it.

That was the position. Dr McIntosh did not resile from the answers he gave to the Senate. When I asked whether the date for the equipment being in operation had been set back as a result of technical difficulties, Dr McIntosh replied, 'At this time, no'. Yet in the Estimates committees six months later Major-General Francis stated that it was expected there would be overall about a year's delay on Parakeet. It is not only the delay that is the critical point here; there is the matter of the technical performance of the company, the management and the cost. All of those things were withheld from the Parliament.

Dr McIntosh is a very senior officer. He above anyone else in this country was in a position, and is in a position, to know the status of project Parakeet not only now but at the start of the year and certainly at April. He knew what the true story was. He knew through the press accounts that were being published at the time, which subsequent events have proved to be accurate in their reporting. He went to the Committee and he misled it as to the true status of a very expensive program which is crucial for the communications of the Australian defence forces. I do not believe he is stupid. This was a premeditated attempt to mislead the Parliament.

I have not yet decided whether I will refer this matter to the Privileges Committee for an opinion but I want to use this opportunity to say to any witnesses in any department—and it is not a personal view—that the Senate will have no hesitation in applying the full weight of its powers to discipline those who transgress the basic principles outlined in the resolution of the Senate.

(*Quorum formed*).

APPENDIX III

1. Submission by Dr M.K. McIntosh
with an Addendum by Major
General D.M.M. Francis
2. Submission by Major General
D.M.M. Francis

SUBMISSION TO THE SENATE COMMITTEE OF PRIVILEGES
BY DR M.K. MCINTOSH, CHIEF OF CAPITAL PROCUREMENT,
DEPARTMENT OF DEFENCE

Introduction

At the meeting of the Senate Estimates Committee on 10 Oct 88, following discussion of the Army's Project PARAKEET, Senator MacGibbon accused the Chief of Capital Procurement, Dr M.K. McIntosh, of misleading the Committee. The accusation relates to evidence given at the meeting of the Committee, which considered the Defence Additional Estimates for 1987/88, on 21 April 1988. Senate Hansard records of the two meetings refer (Estimates Committee E, pages E 67 to E71, and Estimates Committee D, pages D100 and D101).

Senator MacGibbon indicated how he considered that the Committee had been misled in the consideration of the Appropriation Bill on 29 November 1988 (Hansard pages 3087 to 3093). The issue was referred to the Committee of Privileges on 5 December 1988.

Background

Project PARAKEET is to provide an integrated, secure, tactical, trunk communications system for land and joint forces. It is to interface with the radios (man and vehicle portable) being procured under project RAVEN, on the one hand, and the static network being established under project DISCON, on the other. It was to be procured in 5 phases:

1. Concept study (1978-81)
2. System definition (1982-84)
3. Equipment definition (1985-88)
4. Development and trials (1988-94)
5. Production (1990-97)

After competition between suppliers in earlier phases, RACAL Electronics Pty Ltd ('REPL' or 'RACL') was selected as the prime contractor for phase 3 in the expectation that, if its progress and proposals for phases 4 and 5 were satisfactory, it would continue as the sole source for the rest of the project.

At the time of the hearing, phase 3 was concluding and the proposals for phases 4 and 5 were being considered. Discussions were being held with RACAL who were being advised that the Department intended recommending to the Minister that they not continue as sole supplier for later phases. Those discussions were commercial-in-confidence and conditional, noting that Ministerial approval had yet to be sought. A submission to the Minister was being drafted (signed on 6 May 1988) seeking approval to call open tenders for later phases of the project. There was some press speculation on the future of the project, which was indicated as the source of the questioning by (in order of speaking) Senators Newman, MacGibbon and Hill.

Basis of the Accusation

At the hearings on 21 April 1988, essentially 4 specific issues were pursued. The issues and the responses to them by Dr McIntosh and other Departmental officials at the two Senate Estimates hearings can be summarised as follows:

- a. there were serious technical problems with the project;

As was stated at the hearing (eg page E70, left column last para) and confirmed subsequently (page D101, left column para 6) this claim was exaggerated, it was considered that there were some technical problems, but they were expected to be capable of satisfactory resolution. In the event, they were resolved.

- b. there were major cost overruns;

As was stated at the hearing, the phase being completed was not over budget, the contractor's estimates for subsequent work were being considered (page E68, left column, para 14) and whether they would be over budget was not then clear (page E68, left column, para 16). In the event, after further discussions with the contractor, the costs for subsequent phases were progressively and significantly reduced, but remained somewhat higher than previously proposed, and, importantly, their derivation and breakdown could not be justified in terms of the company's original tender. This was confirmed at the subsequent hearing (page D100, right column, para 6).

- c. the project was behind schedule;

As was stated at the hearing (page E68, left column, last para) the current phase was on time and proposals by the contractor for future phases were not expected to be significantly late, but it was noted that it was difficult to say more until the Government had considered the project.

The delay of about 1 year, which has now been injected into the next stages of the project, is a consequence of the Government's decision to reopen tenders, which had not been made at the time of the hearing. Had the Government decided not to proceed in this way, then the proposals from the contractor indicated that such a delay might not have arisen. Noting the developments world-wide in equipment of this kind, it will not be clear what the consequences will be for the timing of the actual introduction of new equipment into service until tenders are called and received.

- d. the next phases of the project would be reopened for competitive tender.

This claim was specifically addressed and responded to several times, (eg page E71, left column, para 5 and right column, first para) to the effect that the way ahead for the project was before Government for decision and could not be commented on.

In the event, it was decided to reopen the project for competition for the next phases, as announced by the Minister for Defence on 30 May 1988. The reasons, however, were somewhat different to those pursued by Senators in the Senate Estimates hearing, and were "the contractor's approach and management of the current phase together with costs and prospects for future phases." These reasons were elaborated on at the hearing of 10 October 1988 (page D100, right column, paras 6 and 8 and page D101, left column, para 6).

The more general claim was that it was implied that there were no problems with the project. This was specifically refuted (eg page E70, left column, last 2 paras). Further, the fact that the project was going back to Government for review and that several very important aspects could not be commented on, was stated several times and clearly indicated problems. No other projects, including those with acknowledged problems, which were discussed at the Committee hearings, were so described.

Some more detailed information on the technical, cost and schedule aspects of the project at the time of the April hearing are attached to this Submission should members of the Privileges Committee be interested in the basis of the advice given to the Estimates Committee.

On the above basis, it is submitted that the Committee was not given false or misleading evidence as known at the time or as emerged subsequently.

Approach to the Estimates Discussions

Under the practices of the Committee, it is not for Public Servants to preempt the decisions of Ministers and the Government by disclosing what is being, or is to be, recommended. Ministers may, quite properly, place a different interpretation or importance on information and assessments presented by officials and come to different conclusions. Officials' speculation on, or interpretation of, "facts" can therefore preempt Ministers.

This lack of disclosure can be quite dissatisfying to Senators seeking more definite answers and may leave them to draw their own (sometimes incorrect) conclusions based on their own views and any other information. Obviously, however, it does not constitute giving false evidence and it is submitted, noting that it was explained why questions could not be answered, that it is not, misleading.

It is also the practice that officials at the hearings respond to questions from Senators on detailed Explanatory Notes on the Estimates and an opening statement, rather than volunteer information in a more seminar style. If questions are not asked, it is presumed that Senators do not require further information on that item or aspect of the Estimates. While a less formal approach is sometimes adopted, and obviously Senators wanted any and all information they could get on the PARAKEET project, it would clearly have been inappropriate for officials to volunteer information and comment in a sensitive area yet to be decided by Government. Noting that the reason why questions could not be answered was given clearly in the discussion, it is submitted that this is not evasive in the pejorative sense.

In the discussion, there were occasions on which what had been said by officials was paraphrased incorrectly by Senators, presumably to elicit further responses. On occasions the paraphrasing was specifically rejected (eg page E70, left column para 11 and last para, page E71, right column, first para). Noting the pressures on the Committee to examine a large quantity of material in a short time, not all such paraphrasing was corrected, particularly if it had already been corrected once, because it was felt that the sense was generally clear and the record would show that to be so. It is presumed that the Privileges Committee will judge what officials actually said, rather than what others said they said.

Circumstances of the Accusation

The April 1988 hearing was on the Additional Estimates for the Department of Defence, which cover those (usually minor) adjustments to funds appropriated in the Budget after some half the financial year has passed. They do not usually represent, or result from, significant changes in direction or policy, which are dealt with in the Budget

deliberations. It was therefore reasonable for initial responses to questions by Senators to be confined to the effects on Additional Estimates, particularly as the opening question (page E67, right column, last para) asked for that assessment.

Once it was clear that Senators (not surprisingly) wished to pursue the longer term prospects of the project, some information could be given on specific claims, and was, but most of the answers sought by Senators could not be given without preempting Ministers. This was indicated as those questions arose by reference to the imminent consideration by Ministers.

An alternative to allowing the discussion to develop as it did might have been to state at the beginning that, the matter having yet to be decided by Ministers, officials could provide no information at all on the project beyond the effect on Additional Estimates. While this approach would have avoided the subsequent charge of misleading the Committee, it would have denied Senators that part of the information they sought, which could be given without preempting Ministers.

The Privilege Reference

In his statement of 29 November 1988 leading to the reference to the Committee of Privileges, Senator MacGibbon repeated his views that:

- a. there were considerable technical problems with the project;

This remains an exaggeration, as outlined in the original hearings, repeated since and again confirmed in this submission.

- b. there were major management problems;

This is correct and was announced by the Minister for Defence on 30 May 1988 as one of the main reasons for the change in acquisition strategy for the project. It was not raised at the April hearing (Senator MacGibbon's subsequent claim that "everyone who had an interest in this field knew", notwithstanding) and was not volunteered for reasons given elsewhere in this submission.

- c. the schedule has slipped.

This is correct. It was not clear that it would at the time of the April hearing and this was indicated as outlined elsewhere in this submission.

Senate Resolution (12), which deals with Privilege matters of this kind requires that:

- "(12) A witness before the Senate or a Committee shall not:
- b. without reasonable excuse, refuse to answer any relevant question put to the witness when required to do so;
 - c. give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular."

As outlined in this submission, I believe that, where answers were given, they were true. Where answers were not given the reason was that the matter was before Ministers, this was clearly stated, and it is submitted that this is a reasonable excuse. Where questions were not asked, there is no offence under Resolution (12). Were it to be argued that relevant information should have been volunteered whether questions were asked or not, the same reason applied and was stated.

Summary

While the discussions of the project were of a partial nature so as not to preempt Ministers and were clearly unsatisfactory to Senators, I do not believe that false or misleading evidence was given by what I said (as opposed to the paraphrasing by others of what I said) as to the facts or status of the project.

If Senators were misled, it was certainly not deliberate on my part and I can only apologise for any deficiencies in the phrasing of my responses, which did not make the position, as outlined in this submission, sufficiently clear.



M.K. MCINTOSH
Chief of Capital Procurement
Department of Defence

2 February 1989

ADDENDUM BY MAJOR GENERAL D.M.M. FRANCIS
ASSISTANT CHIEF OF THE GENERAL STAFF - MATERIEL
TO SUBMISSION TO THE SENATE COMMITTEE OF PRIVILEGES
BY DR M.K. McINTOSH, CHIEF OF CAPITAL PROCUREMENT
DEPARTMENT OF DEFENCE

Introduction

1. This addendum expands on issues raised by Dr McIntosh in his submission. It will discuss the suggestions that there were serious technical problems with the project, that there were major cost overruns and that the project was behind schedule.

Technical Problems

2. I am aware of only one issue which could lead to the suggestion that there were serious technical problems. It related to equipment being produced by the principal sub-contractor to RACAL (EB/STK of Norway). We were concerned at one stage that that equipment would not perform to the standards required by our specification. We were also concerned that RACAL would not guarantee its performance within the contract price. The problem of RACAL's failure to guarantee its performance was in the process of being resolved when it was decided to revert to open tender. The equipment concerned has since been tested and proved satisfactory.

Cost Overruns

3. At the time of the Senate Estimates Committee hearing in April 1988 Phase 3 of the project was in progress. It was proceeding to cost.

4. The only potential for a cost overrun lay in future phases. At the time of the April 1988 Senate Estimates Committee hearing RACAL had provided me an updated estimate of the cost of Phase 4 and I was discussing it with RACAL. That cost was in excess of the estimate for Phase 4 offered by RACAL in their tender for Phase 3 which had been one of the principal factors upon which their selection as prime contractor was based. For a number of reasons their new estimate for Phase 4 was unacceptable and was the principal reason for my recommendation to the Government that we not continue with RACAL as prime contractor and revert to open tender.

5. Until tenders are called we will not know what the cost of subsequent phases will be and whether they will be in excess of our earlier estimates.

Delay to the Project

6. At the time of the Senate Estimates Committee hearing in April 1988 Phase 3 was proceeding on time. If we had recommended to the Government that we continue with

RACAL as the prime contractor for Phase 4 and the Government had approved that in the context of the Budget in August 1988 it is likely that the project would have continued to be on time.

7. The decision by the Government to revert to open tender, which had not been made at the time of the Senate Estimates Committee hearings, leads to a number of procedures which will take more time than would have been the case if we had continued with RACAL as planned. Following the Government's decision we have taken the opportunity to revise our Equipment Acquisition Strategy before calling tenders. It is my assessment that we will be able to seek Government approval for the next phase in the context of the Budget in August 1989. It was on the basis of the slippage of approval for the next phase from Budget 1988 to Budget 1989 that I advised the Senate Estimates Committee in October 1988 that I expected a delay of about one year.

8. It is difficult at this stage to assess the consequential delay on complete introduction of the PARAKEET system into service. I will be in a better position to do so on receipt of tenders called late this year and early in 1990, if we get approval to do so from the Government in the context of the Budget in 1989.



D.M.M. FRANCIS
Major General
Assistant Chief of the General Staff - Materiel

2 February 1989

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ASSISTANT CHIEF OF THE GENERAL STAFF—MATERIEL

DEPARTMENT OF DEFENCE
(ARMY OFFICE)
RUSSELL OFFICES
CANBERRA, A.C.T. 2600

16 December 1988

The Secretary
Senate Committee of Privileges
Parliament House
CANBERRA ACT 2600

Dear Madam,

I refer to your letter dated 15 December 1988 concerning the question of the possibility of misleading evidence having been given to a Senate Estimates Committee on Project PARAKEET.

It is my perception that the issue will be decided on opinions on the meaning of the words used by Dr McIntosh in April and my words in October. I believe that the important opinions in the case will be those of the members of the Committee of Privileges.

Dr McIntosh's and my words are, I believe, accurately recorded in Hansard. Accordingly I do not think I can assist the Committee at this time by making a written submission. I will, of course, be happy to assist the Committee in any way and await their wishes in this regard.

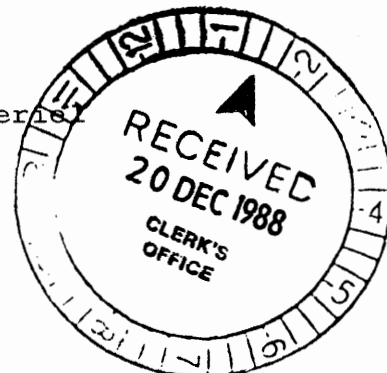
I assume that the Committee is aware that Dr McIntosh heads the Capital Procurement Organisation in the Department of Defence and that I am one of his divisional heads.

I would also like to record, as I discussed on the phone today, that I will be on leave until 30 January 1988. My office will of course know where to contact me while I am away (in Perth mainly).

Yours faithfully,

D.M.M. FRANCIS
Major General
Assistant Chief of the General Staff - Materiel

c.c. Dr M.K. McIntosh
Chief of Capital Procurement



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