
The Parliament of the Commonwealth of Australia

Proposed Release of the In Camera Evidence to the Bankstown Observer Inquiry

House of Representatives
Committee of Privileges

November 1999
Canberra

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Membership of the Committee

Chair Hon A M Somlyay MP

Deputy Chair Mr R W Sawford MP

Members Mr K J Andrews MP

Mr M Danby MP

Hon D F Jull MP

Hon D J C Kerr MP

Mrs M A May MP

Mr R B McClelland MP

Mr P C Neville MP

Mr R C G Sercombe MP

Dr A J Southcott MP

Committee Secretariat

Secretary Mr David Elder

Research Officer Ms Catherine Cornish

Administrative Officer Ms Anna Gadzinski

Background

- 1.1 In 1955, the Committee of Privileges conducted the most controversial inquiry in its history into articles published in the Bankstown Observer which reflected on the then Member for Reid, Mr C A Morgan. As a result of the inquiry, the Committee found that the proprietor of the Bankstown Observer, Mr Raymond Fitzpatrick, and the journalist who wrote the articles, Mr Frank Browne, were guilty of:

...a serious breach of Privilege by publishing articles intended to influence and intimidate a Member, the honourable Member for Reid, in his conduct in the House, and in deliberately attempting to impute corrupt conduct as a Member against the honourable Member for Reid, for the express purpose of discrediting and silencing him.
- 1.2 Following this finding, the Committee recommended that the House should take appropriate action. The House agreed with the Committee's findings, resolved to hear Browne and Fitzpatrick at the Bar of the House and after having done so, sentenced each to three months imprisonment. Following unsuccessful cases before the High Court and the Privy Council, Browne and Fitzpatrick were gaoled for a period.
- 1.3 In relation to the inquiry, the Committee of Privileges took oral evidence from Messrs Morgan, Fitzpatrick and Browne. As was the custom at the time, the Committee took its evidence in camera. While the Committee printed extracts from the evidence in substantiation of its findings, the complete evidence was not presented to the House (nor has it since been made public).

- 1.4 Requests have been received over the years either for the evidence to be made public or for particular individuals to have access to the evidence for their own private purposes. A previous Speaker agreed to one request for private access by an individual to some of the evidence but the evidence was not made publicly available.
- 1.5 Most recently, representations have been made by the National Archives of Australia Advisory Council that there would be considerable public interest in the in camera evidence being released. As a result of these representations, the Chair of the Committee sought the Speaker's approval to having him and the Deputy Chair of the Committee examine the evidence with a view to recommending whether public release of the evidence was appropriate. The Speaker agreed to this request, but also asked that advice be sought on the legal implications of any public release.

The Issues

- 1.6 The Chair and Deputy Chair of the Committee examined the papers and reported to the Committee that there would be considerable public interest in the papers and that there did not appear to be other compelling reasons not to release the material.
- 1.7 Advice was sought from the Australian Government Solicitor (AGS) on the legal issues associated with possible public release. A copy of the advice from the AGS is at Appendix A.
- 1.8 The AGS noted that the transcript contained defamatory statements that, were it not for parliamentary privilege, would probably be actionable if the persons defamed were still alive. The probable defamations were contained in the evidence by Mr Morgan and related to one of the other parties to the inquiry, Mr Fitzpatrick, and another person, former Mr Justice Taylor of the New South Wales Industrial Commission, who was not a party to the inquiry and would probably not have been aware of the evidence given by Mr Morgan.
- 1.9 A significant concern about public release of the evidence has been the probable defamatory statements contained in the evidence, particularly in relation to Justice Taylor who was not a party to the inquiry. While there is sensitivity about the release of these untested allegations, Justice Taylor is now deceased and there could be no action for defamation. The witnesses to the inquiry also are deceased.

- 1.10 The Committee appreciates the concerns about the sensitivity of the evidence to the relatives of the witnesses and those referred to adversely in the evidence. In recommending that the House agree to the release of the evidence to the inquiry through National Archives, the Committee proposes that National Archives have a month to contact relatives of those referred to in the evidence and make them aware of its contents.
- 1.11 There has also been a concern that releasing in camera evidence of any committee, but particularly of the Committee of Privileges, could undermine the capacity of the Committee to have a full and frank exposure of evidence in camera in the future. Publication of the in camera evidence of any committee should not be taken lightly. However, this evidence was taken over 40 years ago and the majority of the members of the Committee at the time, the witnesses and those referred to in evidence are now dead. The Committee does not believe that the public release of in camera evidence under these circumstances undermines the current evidence gathering processes of the Committee or of other committees.

Recommendation

- 1.12 **The Committee recommends that the in camera evidence to the Committee of Privileges' Bankstown Observer inquiry be publicly released by means of the House:**
- **authorising publication of the in camera evidence; and**
 - **transferring the evidence to the National Archives of Australia for public access, but that public access be permitted only after Archives has endeavoured, for a period of a month from receipt of the evidence, to contact the relatives of persons who gave evidence or were referred to in the evidence.**

HON A M SOMLYAY MP
Chairman
November 1999



Appendix A

Advice from the Australian Government Solicitor



Our ref: 99025272

16 September 1999

Mr David Elder
Clerk Assistant (Committees)
Department of the House of Representatives
Parliament House
CANBERRA ACT 2600

Dear David

**COMMITTEE OF PRIVILEGES: RELEASE OF IN CAMERA EVIDENCE RELATING TO
MR F C BROWNE AND MR R E FITZPATRICK**

1. We refer to various discussions concerning the possible publication of material constituting in camera evidence given to a former Committee of Privileges in relation to Mr F C Browne and Mr R E Fitzpatrick. In particular, we refer to the recent discussions with Mr Somlyay, Mr Sawford and yourself.

Publication of the material and possible claim for defamation

2. The only really sensitive material from a defamation perspective is the transcript of evidence by Mr Morgan. That transcript contains defamatory statements that, were it not for parliamentary privilege, would probably be actionable if the persons defamed were still alive. This particularly concerns Mr Fitzpatrick and former Justice Taylor of the NSW Arbitration Court. However, no action lies for defamation of the dead, however distressing to relatives and friends. A residual, though now virtually obsolete, safeguard against gross defamation of the dead remains in the criminal law, but even that has been abolished in NSW by legislation. The probability is that both Mr Fitzpatrick and Justice Taylor are now dead, and any question of defamation action has died with them. In any event, the material is protected by parliamentary privilege and any publication of it under Parliamentary authority would be additionally protected by the *Parliamentary Privileges Act 1987*.

Office of General Counsel

Mechanism for publication of the material

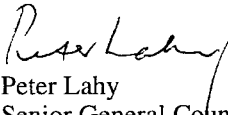
3. In the light of the discussions referred to above, we understand that it is proposed that the present Committee of Privileges will prepare a short report about the in camera evidence to be tabled in the House of Representatives. It is also proposed that the House pass a resolution or resolutions to the following effect:

- that the material constituting the in camera evidence be transferred to the Australian Archives but on the condition that for a specified, limited, period only those relatives of persons who gave or were referred to in the in camera evidence would have access to the material; and
- that after the specified period has expired the publication of the material constituting the in camera evidence is authorised.

4. We are not aware of any legal impediment to the adoption of this course. In particular, it seems to us to be consistent with the provisions of the *Archives Act 1983* as modified in their operation to the records of the Parliament by the Archives (Records of the Parliament) Regulations.

5. Please let us know if we can be of further assistance.

Yours sincerely



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