

Report

Terms of Reference

1.1 On 26 June 2014, the Senate referred the following matters to the Senate Finance and Public Administration Legislation Committee (committee) for inquiry and report by the 7th sitting day in March 2015:

- (a) progress in implementing the recommendations of the committee's 2012 reports into the performance of the Department of Parliamentary Services (DPS), with particular reference to:
 - (i) workplace culture and employment issues,
 - (ii) heritage management, building maintenance and asset management issues, and
 - (iii) contract management;
- (b) the senior management structure of DPS and arrangements to maintain the independence of the Parliamentary Librarian;
- (c) oversight arrangements for security in the parliamentary precincts and security policies;
- (d) progress in consolidating Information and Communication Technology services and future directions;
- (e) the future of Hansard within DPS;
- (f) the use of Parliament House as a commercial venue;
- (g) further consideration of budget-setting processes for the Parliament and the merits of distinguishing the operating costs of the parliamentary institution and such direct support services such as Hansard, Broadcasting and the Parliamentary Library, from the operations and maintenance of the parliamentary estate;
- (h) consideration of whether the distinction between the operations of the parliamentary institution and its direct support services, and the operations and maintenance of the parliamentary estate, is a more effective and useful foundation for future administrative support arrangements, taking into account the need for the Houses to be independent of one another and of the executive government; and
- (i) any related matters.¹

1 *Journals of the Senate*, No. 37 – 26 June 2014, p. 1019.

Introduction and background

1.2 This is the second interim report of the committee for this inquiry. This report discusses only one issue, whether the committee was misled at its estimates hearing on 26 May 2014 by the evidence given by Ms Carol Mills, former Secretary of the Department of Parliamentary Services (DPS).

1.3 In its first interim report the committee discussed the Senate Committee of Privileges' (Privileges Committee) 160th report on 'The use of CCTV material in Parliament House'.

1.4 The Privileges Committee inquired into a code of conduct investigation commenced by DPS in February 2014. In the course of that investigation, DPS had accessed CCTV images of a DPS employee placing an envelope under the door of Senator Faulkner's office at Parliament House. The Privileges Committee sought to determine, in relation to the use of the CCTV footage by officers of 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.²

1.5 In its report the Privileges Committee recommended that the committee's attention be drawn to contradictions between:

- evidence provided to the committee during the course of estimates hearings for DPS on 26 May 2014; and
- a submission and additional documents provided by DPS to the Privileges Committee during the course of its inquiry into the use of CCTV material in Parliament House.³

1.6 The committee decided to consider the matter of the contradictory evidence identified by the Privileges Committee as part of its broader inquiry into DPS. The committee's first interim report set out:

2 See Privileges Committee, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 1.

3 See Privileges Committee, *The use of CCTV material in Parliament House*, 160th Report, December 2014, p. 38. The Senate adopted the recommendations of the Privileges Committee's report on 12 February 2015, see *Journals of the Senate*, No. 78 – 12 February 2015, p. 2184. On 2 March 2015 the President of the Senate tabled his response to the Privileges Committee report, which agreed with the recommendations in the report, see *Journals of the Senate*, No. 79 – 2 March 2015, p. 2191. The President wrote to the committee on the same day and provided a copy of his response to the Privileges Committee report.

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- the material provided to the Privileges Committee by DPS in its submission and additional documents;
 - correspondence from Ms Mills received 20 February 2015, seeking to explain the contradictory evidence; and
 - correspondence from the Clerk of the Senate, Dr Rosemary Laing, received 17 March 2015, outlining her recollection of a meeting with Ms Mills on the morning of 26 May 2014, prior to Ms Mills' appearance before the committee that morning.

1.7 The committee initially planned to discuss the issue of the contradictory evidence with Ms Mills at the hearing on 16 March 2015 but was advised she was on leave. The committee proceeded with the hearing on 16 March 2015 but covered other matters in the DPS inquiry with the intention of having Ms Mills appear before the committee once she had returned from leave. In its first interim report, which was tabled following the termination of Ms Mills' employment with DPS on 21 April 2015, the committee indicated that it still had a number of questions for Ms Mills regarding the contradictory evidence. The committee resolved to invite Ms Mills to attend a hearing on 13 May 2015 in a private capacity and she accepted this invitation.

1.8 The committee has spent considerable time examining this issue and does not intend to make further inquiries in relation to this matter. The committee has therefore decided to table a second interim report dealing only with this issue. As the committee noted in its first interim report, the focus in the remainder of this inquiry into the performance of DPS is to look more broadly at the role, functions and structure of DPS within the current framework.

Investigation into the code of conduct matter

1.9 On 25 February 2014, the Secretary of DPS approved a preliminary investigation into whether a DPS employee (Employee X) had breached the Parliamentary Services Code.⁴ The brief requesting the Secretary's approval for the preliminary investigation outlined the background to the matter, namely that a second DPS employee (Employee A) had received a typed anonymous note in her in-tray on the morning of 19 February 2014:

The note was clearly designed to cause [Employee A] distress.

...

On 20 February it was established that [Employee X] had been absent from the workplace on 19 February but had entered Parliament House at 9.31 PM on the evening of 18 February and exited at 9.40 PM. Security camera footage shows [Employee X] entering through the Senate security area with several pieces of paper in her hand. There are a number of camera views

4 See DPS Submission to the Privileges Committee, 26 September 2014, available in Committee Privileges, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 66.

that show her proceedings to the area outside the entrance to Hansard [where Employee A works] and then leaving the vicinity of Hansard via the lift and then the first floor...

[Employee X's] only movements within Parliament House were to proceed from the Senate security entrance to the vicinity of Hansard (immediately outside the entrance door) and then exit the building.⁵

1.10 In addition to asking the Secretary for approval of the preliminary code of conduct investigation the brief sought approval for:

[T]he release of information from Security Support such as entry and exit times for [Employee X] and also the release of still photographs from security cameras that depict [Employee X's] movements within Parliament House between 9.31 PM and 9.40 PM on 18 February 2014.⁶

1.11 On 27 February 2014, Ms Mills was sent an email by the officer conducting the preliminary investigation:

Through investigating additional footage of [Employee X's] movements, DPS footage has also shown that [Employee X] deposited a brown envelope under the door of Senator Faulkner's office before [DPS'] Senate Estimates Hearing...

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.

Your direction in how you wished us to manage this matter would be appreciated – noting its broader context in how DPS employees interact with Members of Parliament.⁷

1.12 Ms Mills responded to this email on the same day stating:

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.⁸

1.13 This response from Ms Mills prompted the following email from the officer:

Please be assured that we were not monitoring DPS employees visiting any particular parliamentarian.

5 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 112.

6 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 112.

7 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 115.

8 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 114.

As part of our preliminary investigation into another matter regarding the anonymous letter provided to [Employee A], [Employee X's] movements in and out of the building were examined and this other bit of footage came to light.⁹

1.14 Ms Mills then responds:

[Y]es I well understand how it occurred.¹⁰

1.15 On 12 March 2014, Ms Mills signed a second brief approving a formal investigation into whether 'on the balance of probabilities' Employee X has breached the Parliamentary Service Code of Conduct by leaving the note addressed to Employee A.¹¹ The 12 March 2014 brief reiterates the background to the matter and notes that Employee X had been asked to provide information regarding her reasons for being in Parliament House on the evening of 18 February 2014. The brief states that while Employee X has provided some information about why she was in Parliament House that night:

There are [a] number of remaining issues that require clarification and the questions that need to be put to [Employee X] are more appropriate for a formal investigative process rather than a preliminary [one].

In addition to the questions originally put to [Employee X] it is now apparent that at some stage between her entry to the building and her walking along the first floor Senate wing corridor (heading south) that she acquired a brown envelope. Given that [Employee X] did not enter the building with the envelope nor obtain the envelope from [her work area] as she did not enter her work area, one of the possibilities is that it was obtained from Hansard. From mapping out the route taken by [Employee X] on the evening of 18 February, Hansard would appear to have been the only unlocked work area to which she could have gained entry.

A selection of still photographs from the security camera footage are attached for your information.¹²

1.16 On 19 March 2014, Ms Mills also signed a letter appointing an investigating officer to determine whether Employee X had breached the Parliamentary Service Code of Conduct.¹³

9 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 114.

10 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, p. 114.

11 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, pp 117-118.

12 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, pp 117-118.

13 See Privileges Committee, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, pp 123-124.

Evidence provided at the Estimates hearing on 26 May 2014

Department of the Senate

1.17 On the morning of 26 May 2014, Senator Faulkner questioned officers of the Department of the Senate on the CCTV code of practice for Parliament House. For the most part, these were questions of a general nature about the operation of the CCTV code of practice.¹⁴

1.18 However, towards the end of his questions, Senator Faulkner referred to a line of questioning that he and Senator Ronaldson had previously pursued with the Department of the Senate and DPS in February 2012. That questioning related to a newspaper report that security cameras in Parliament House were being used to identify whistle-blowers leaking information to Senator Faulkner.¹⁵ Senator Faulkner asked the Clerk of the Senate specific questions about advice she may have provided regarding the parliamentary privilege implications of the use of CCTV footage in Parliament House.¹⁶ The Clerk stated:

[T]here 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 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.¹⁷

1.19 At the end of his questioning, Senator Faulkner indicated to the President of the Senate 'I might follow some of these matters up when we deal with the Department of Parliamentary Services'.¹⁸

Department of Parliamentary Services

1.20 Shortly after DPS commenced its appearance at 11.17am on 26 May 2014, Senator Faulkner, as he had foreshadowed, began with questions about the CCTV code of practice.¹⁹ In particular, Senator Faulkner sought information on who, within DPS, could access CCTV footage:

Senator FAULKNER: So access to the CCTV footage, in terms of DPS staff, is very limited, isn't it?

14 *Committee Hansard*, 26 May 2014, pp 8-11.

15 *Committee Hansard*, 13 February 2012, pp 7-8, 40-45.

16 *Committee Hansard*, 26 May 2014, pp 11-13.

17 *Committee Hansard*, 26 May 2014, pp 12-13.

18 *Committee Hansard*, 26 May 2014, p. 13.

19 *Committee Hansard*, 26 May 2014, pp 31-32.

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.²⁰

1.21 In the course of this particular line of questioning, Ms Mills indicated that DPS may have breached the CCTV code of practice:

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.²¹

1.22 It is clear to the committee from this exchange that it is Ms Mills who has raised the prospect that DPS may have breached the CCTV code of practice in the course of investigating a matter to do with a staff member. In fact, Senator Faulkner responds to Ms Mills' revelation stating 'That is not a question I have asked yet...'.²²

1.23 Senator Faulkner goes on to express concern about the information that had just been disclosed and seeks further information on the matter from Ms Mills about DPS' use of CCTV footage:

Senator FAULKNER:...I want to know whether CCTV footage in this building has been used to monitor DPS staff?

20 *Committee Hansard*, 26 May 2014, p. 32.

21 *Committee Hansard*, 26 May 2014, p. 33.

22 *Committee Hansard*, 26 May 2014, p. 33.

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 [the guidelines], 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.²³

1.24 In this exchange Ms Mills puts a specific timeframe on the particular investigation which she has raised stating '[an] incident occurred some months ago'. Further, Ms Mills also notes that the case arose 'where a potential code of conduct breach occurred'.

1.25 It is at this point in her evidence that Ms Mills claims that she had only just found out about the matter that morning having watched the questioning of the Department of the Senate:

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.²⁴

1.26 Senator Faulkner indicated that he had not asked the Department of the Senate about the particular matter, to which Ms Mills responded:

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.

23 *Committee Hansard*, 26 May 2014, p. 33.

24 *Committee Hansard*, 26 May 2014, pp 33-34.

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.²⁵

1.27 Ms Mills then advised the committee that, to her knowledge, CCTV had only been used once in relation to staff matters:

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.²⁶

1.28 Mr Neil Skill, the First Assistant Secretary of the Building and Asset Division, DPS, also advised he was only aware of one case:

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.²⁷

1.29 When Senator Faulkner sought to establish whether there could be more than one incident, Ms Mills stated that DPS were looking into the matter further.²⁸ Subsequently, it was confirmed that CCTV footage had been accessed on two other occasions for non-code of conduct matters, specifically, allegedly inappropriate conduct by a guard and a fraud incident.²⁹

1.30 Senator Faulkner also asked whether a senator was involved:

25 *Committee Hansard*, 26 May 2014, p. 34.

26 *Committee Hansard*, 26 May 2014, p. 34.

27 *Committee Hansard*, 26 May 2014, p. 35.

28 *Committee Hansard*, 26 May 2014, p. 37.

29 *Committee Hansard*, 26 May 2014, pp 64-65.

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:...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.³⁰

1.31 The committee notes again, that in the course of this exchange, Ms Mills refers to 'a potential code of conduct breach by a staff member of the department'.

1.32 Senator Faulkner subsequently returned to questioning about the involvement with senators or their offices:

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.³¹

1.33 Once again, in this exchange, the committee notes that Ms Mills refers to 'this one incident to do with the code of conduct for a staff member'.

1.34 Later in the hearing, following the lunch break, the committee returned to this topic and specifically to the draft investigation report. Prior to that report being read out, Ms Mills provided the following explanation of the context of the report:

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 [the draft investigation report].³²

1.35 Senator Faulkner asked for any paragraphs of that draft report which related to a senator's office or a senator – namely, himself – to be quoted:

Ms Teece: In response to the allegation, the person that is subject to the code [Employee X] 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*

31 *Committee Hansard*, 26 May 2014, pp 40-41.

32 *Committee Hansard*, 26 May 2014, p. 75.

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—

[Employee X]—

*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.*³³

1.36 Senator Faulkner indicated that suite 42 of the outer corridor was his office. Senator Faulkner then asked that any further paragraphs in relation to suite 42 be read out:

Senator FAULKNER: ...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 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.'*³⁴

1.37 During that afternoon session on 26 May 2014, Ms Mills reiterated that she was not aware of the draft code of conduct report and that she had not read that report.³⁵

Evidence provided on 13 May 2015

1.38 At the hearing on 13 May 2015, Ms Mills repeated the claims that she made in her letter of 20 February 2015. Ms Mills stated:

At the time I gave the evidence [on 26 May 2014], there was no reason for me to connect Senator Faulkner's line of questioning with the disciplinary inquiry set in train in DPS in [February] 2014. It was a code of conduct investigation into harassment by a department staff member of a colleague. It was unrelated to the line of questioning that I believed was being followed at the time.³⁶

1.39 Ms Mills set out the context of her appearance before the committee for the estimates hearing on 26 May 2014:

On the morning of 26 May 2014 during the estimates hearing, Senator Faulkner asked the Department of the Senate a series of broad questions relating to CCTV operating policy. He indicated he would take up the same issue with DPS later in the day. At that point, the senator's questions did not touch on any particular matter but related to the CCTV code of conduct in general terms. In order to be prepared for my own appearance before the estimates hearing, I sought to establish what the senator's line of questioning might relate to. But in the brief time I had available before my initial appearance, I was unable to ascertain this. There was nothing in his line of questioning in the morning that could reasonably suggest I should have been able to make a link between that and the internal disciplinary matter that I had knowledge of from the department earlier in the year.³⁷

1.40 Ms Mills further explained:

I was aware that in the course of that disciplinary investigation into harassment CCTV footage had been inspected by authorised officers. They had done this only for the purpose of confirming the employee's entry into, exit from and movement within Parliament House on the evening in question. When the officers unexpectedly observed the staff member making contact with a senator's office, they drew this to my attention. As

34 *Committee Hansard*, 26 May 2014, p. 76.

35 *Committee Hansard*, 26 May 2014, p. 65.

36 *Committee Hansard*, 13 May 2015, p. 2.

37 *Committee Hansard*, 13 May 2015, p. 2.

the department's evidence to Privileges showed, I instructed those officers specifically that this was to be excluded from any element of the investigation, stating 'contact with the parliamentarians is not something we monitor'.³⁸

1.41 Ms Mills stated that to her knowledge, at the time of her appearance before the committee on 26 May 2014, her instruction that 'contact with parliamentarians is not something we monitor' had been followed and there was no reason for her to link the investigation of the harassment to anything to do with Senator Faulkner's questioning to the Department of the Senate at the estimates hearing.³⁹

1.42 Ms Mills also referred to the meeting she had with the Clerk of the Senate on the morning of 26 May 2014:

The Clerk advised me that Senator Faulkner was in possession of a report relating to the disciplining of an officer for having contact with a senator's office. The Clerk advised me she had seen the report. It was a misuse of CCTV and, in her view, a breach of privilege. The Clerk did not inform me when the report had been produced, who authored it, how old the matter was or to whom it related. Therefore, nothing she told me caused me to connect it to the harassment investigation underway in the department. Frankly, had I connected it, there was no reason for me to then not have made reference to it that morning. There was no motive for me whatsoever not to have directly referenced it if I had been aware of it.⁴⁰

1.43 Ms Mills explained why she did not make further inquiries into the matter prior to appearing at the estimates hearing:

While it would have been my normal practice to fully investigate details of such claims on the day, all I had time to do before my own appearance [at the estimates hearing] was to go back to my office very briefly, instruct staff to thoroughly search DPS records for any case or report as described by the Clerk or otherwise involving CCTV. Again, I did this because I was unaware of the report specifically and wanted to gather as much information as I could on the day.⁴¹

1.44 Ms Mills noted that the Clerk had advised that 'as soon as the senator began to ask questions about CCTV policy, I should inform him that I had just been made aware of the report in his possession, inform him that the department had breached privilege and apologise'.⁴² Ms Mills stated that she had been reluctant to take such advice:

Having not seen the report or been aware of any such report or of any employee being disciplined for contact with a senator's office, I was

38 *Committee Hansard*, 13 May 2015, p. 2.

39 *Committee Hansard*, 13 May 2015, p. 2.

40 *Committee Hansard*, 13 May 2015, p. 2.

41 *Committee Hansard*, 13 May 2015, p. 3.

42 *Committee Hansard*, 13 May 2015, p. 2.

uncomfortable about acknowledging a breach without being fully aware of the circumstances and being able to verify myself if a breach had occurred. The Hansard record shows that, to some extent, I did follow the Clerk's advice: I did not admit a breach.⁴³

1.45 Ms Mills stated that, on the morning of 26 May 2014, she had not been able to make the connection between the code of conduct investigation she authorised in February 2014 and the matter which subsequently was referred to the Privileges Committee:

There remained no reason why I would connect Senator Faulkner's line of questioning in May [2014] with a disciplinary inquiry set in train in DPS in [February] 2014, because that had no relation to the officer's contact with a senator. It was a code of conduct investigation into alleged harassment. Equally, there was no reason for me to identify this unfinished code of conduct investigation when I spoke with the Clerk, from what she described to me. I did not and could not have known that the CCTV footage referred to in my email of 27 February was the same footage referred to by Senator Faulkner in his questions.

As a decision maker in the code of conduct process, I was properly kept removed from that investigation. So between 27 February and 26 May 2014 I was not advised of its progress. I was therefore unaware that a draft report had been written or provided for comment to the staff member under investigation as part of the standard code of conduct process. Given that I had specifically instructed officers that footage showing contact with a senator's office was to be excluded from the investigation and had understood that that instruction had been followed, once again there was no reason for me to link this harassment investigation to Senator Faulkner's questioning at the time.⁴⁴

1.46 Ms Mills was emphatic that she had not misled the committee:

My answers to the committee last May were given in good faith. To reiterate: I did not know at the time I gave the evidence that has been challenged by the Privileges Committee what investigation was being referred to or what CCTV footage was at issue. So when Senator Faulkner asked, 'Does it involve me?' I answered in good faith: 'It may do ... That is what I am looking into.' This was true. [These are] the instructions I had given my staff. I simply did not know when I gave that answer what footage or issue was being spoken of. It was not until the lunch adjournment on 26 May [2014] that, following my staff's search, I was provided with a copy of and briefly reviewed the investigator's draft code of conduct report into the harassment matter. That was the first time I had seen what was actually a draft—not a finalised report—into the internal matter, and it turned out to be the report in the possession of Senator Faulkner.

43 *Committee Hansard*, 13 May 2015, p. 2.

44 *Committee Hansard*, 13 May 2015, p. 3.

My evidence to the committee was given in good faith and it was entirely accurate from the information available to me at the time. I had not previously seen the report, nor was I aware of its existence. Having received the information, however, as the *Hansard* record makes clear, after the luncheon break [of the estimates hearing] I spoke openly about the report with the assistance of the Acting Chief Operating Officer of the department and continued to answer Senator Faulkner's questions in good faith. To reiterate: Senator Faulkner's questions about CCTV usage [for] monitoring staff and contact with officers of the department was inconsistent with my understanding of the harassment investigation underway and I had no reason to draw a link and, therefore, the [information] that I provided to committee was, to the best of my knowledge, neither misleading nor contradictory.⁴⁵

Committee view

1.47 The committee wishes to emphasise that Ms Mills accepted the committee's invitation to appear on 13 May 2015 in a private capacity to discuss the contradictory evidence and acknowledges Ms Mills' willingness to assist the committee in relation to this matter.

1.48 Ms Mills continues to stridently deny that she has misled the committee. Ms Mills maintains there is no reason she should have been able to connect the questioning by Senator Faulkner of the Department of the Senate regarding the use of CCTV in Parliament House, with a specific code of conduct investigation where CCTV footage was accessed and which became the subject of the Privileges Committee inquiry.

1.49 The committee notes that Ms Mills' evidence on 13 May 2015 was that between 27 February and 26 May 2014 she was not advised of the progress of the code of conduct investigation. This is clearly not true. On 12 March 2014 Ms Mills received a brief seeking approval for a formal code of conduct investigation. That brief set out the background to the matter and referred to footage which had been used to track the employee's path through Parliament House on the evening of 18 February 2014. Ms Mills also signed a letter on 19 March 2014 appointing an investigating officer to the code of conduct investigation and that letter also contained background details on the events which were the subject of the investigation.

1.50 This material was in addition to the 25 February 2014 brief which not only set out the background to the matter, but also sought approval for the release of additional still photographs depicting the employee's movements in Parliament House on 18 February 2014. Further, Ms Mills received an email on 27 February 2014 advising her that further footage of the employee's visit to Parliament House on 18 February had been located. Not only did that email refer to the footage of the employee placing a brown envelope under Senator Faulkner's door, it raised broader concerns about the interaction of DPS staff with parliamentarians.

45 *Committee Hansard*, 13 May 2015, p. 3.

1.51 Given the details of the investigation which were provided to Ms Mills in the two briefs, the email of 27 February 2014, and the letter which Ms Mills signed on 19 March 2014, the committee finds it difficult to believe that Ms Mills could have entirely forgotten about this matter when she heard Senator Faulkner's questions to the Department of the Senate on 26 May 2014.

1.52 Ms Mills also claims that she was not able to connect Senator Faulkner's questioning with the code of conduct investigation because the investigation was into a matter of harassment of one DPS employee by another, and not an investigation into interference with a senator or member. Further, Ms Mills claims that the meeting she had with Clerk of the Senate on 26 May 2014 did not assist her to make the connection because the Clerk had spoken of a report about disciplining a DPS staff member for contact with a senator's office.⁴⁶

1.53 The committee does not accept Ms Mills' assertion that because of the nature of Senator Faulkner's questions and the Clerk's characterisation of the matter, being about investigations into contact between DPS staff and parliamentarians, she was unable to make the connection with the code of conduct investigation into a possible case of harassment by one DPS staff member of another staff member.

1.54 In the committee's view, the evidence that Ms Mills gave on the morning of 26 May 2014, regardless of Senator Faulkner's previous questions or the exchange which Ms Mills had with the Clerk, suggests that she was, in fact, discussing a code of conduct investigation of a DPS staff member which had occurred some months ago. On a number of occasions on the morning of 26 May 2014, as the committee has noted, Ms Mills referred to the matter as a code of conduct investigation.

1.55 Even if Ms Mills was not able to recall the specific details of the investigation, according to the evidence of Ms Mills and Mr Skill on 26 May 2014, this was the only code of conduct investigation involving that use of CCTV footage and one of a total of only three staff related matters where CCTV footage had been accessed by DPS. Given the limited number of such investigations the committee simply cannot believe that Ms Mills did not make the connection.

1.56 The committee accepts Ms Mills' statements that, prior to giving evidence on the 26 May 2014, she was unaware of the existence of the draft report which resulted from the code of conduct investigation. Further, the committee notes that Ms Mills had explicitly instructed staff on 27 February 2014 that 'contact by individuals with parliamentarians is not something we monitor...'.⁴⁷

1.57 However, despite this instruction, the brief of 12 March 2014 seeking approval for a formal code of conduct investigation still makes reference to the

46 The committee notes that the Clerk of the Senate has provided correspondence which states that Ms Mills' recollection of the meeting does not accord with her own, see correspondence from Dr Rosemary Laing to Senator Cory Bernardi, Chair of the Senate Finance and Public Administration Legislation Committee, dated 17 March 2015.

47 See Senate Committee of Privileges, *The use of CCTV material in Parliament House: Documents presented to the committee*, December 2014, pp 114-115.

employee carrying a brown envelope and walking along the outer corridor of the first floor of the Senate wing. While the brief does not make any mention of the envelope being placed under Senator Faulkner's door, it would appear that the code of conduct investigation was still making some reference to the additional CCTV footage which was drawn to Ms Mills' attention on 27 February 2014.

1.58 While the committee accepts that Ms Mills may not have been aware of the existence of the draft code of conduct report, having heard Ms Teece read from the draft report on the afternoon of 26 May 2014, the committee finds it implausible that Ms Mills would not have made the connection between the matter being discussed with the committee that day and the preliminary and formal code of conduct investigations which she authorised over the period February-March 2014.

1.59 Having considered Ms Mills' correspondence of 20 February 2015 and evidence of 13 May 2015, the committee still cannot reconcile those explanations with the evidence Ms Mills provided to the committee on the 26 May 2014.

1.60 Specifically, Ms Mills has omitted to clarify to the committee, either on 26 May 2014 or at any subsequent point, that she in fact authorised the preliminary and formal code of conduct investigations on 25 February 2014 and 12 March 2014 respectively. In omitting to tell the committee of this information, the overall impression of the evidence that Ms Mills provided in relation to the code of conduct investigation is that she only became aware of it on the morning of 26 May 2014. Clearly this is not the case. The committee therefore cannot come to any other conclusion than it was misled by Ms Mills at the estimates hearing on 26 May 2014.

1.61 The committee believes that Ms Mills' misleading evidence has had a substantive impact on the committee's work. As the committee noted in its first interim report Ms Mills' failure, to that point, to explain the contradictory evidence identified by the Privileges Committee was one factor in Ms Mills' standing as a witness being seriously eroded. For nearly a year, the committee has been engaged in its inquiry into DPS. For a significant period of that time the committee has had concerns over the veracity of evidence provided by Ms Mills, not only in relation to the CCTV matter, but also other matters. There can be no doubt that the committee's concerns as to Ms Mills' credibility as a witness has, to some degree, hampered the committee in its work.

1.62 However, while the committee is of the view it has been misled and that the committee's work has been affected, the committee also acknowledges that Ms Mills' employment with DPS has now been terminated. As indicated in the committee's interim report, the committee's focus will now be looking more broadly at the role, functions and structure of DPS.

1.63 The committee believes it has now pursued this matter as far as practicable and reports accordingly to the Senate.

Senator Cory Bernardi

Chair

