The Senate

Committee of Privileges

The use of CCTV material in Parliament House

Documents presented to the Committee

December 2014

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AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE
CANBERRA ACT 2600
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pvinqcctvsp_19049

18 July 2014

Senator the Hon Stephen Parry
President of the Senate
Suite SG 40
The Senate
Parliament House
Canberra ACT 2600

Dear Mr President Stephen,

I would like to thank you and the Speaker of the House of Representatives for facilitating for members of the Senate Committee of Privileges yesterday a demonstration of aspects of the security systems operating in Parliament House, including a visit to the operations room. This visit will be invaluable to the committee in understanding the background to its reference. Unfortunately, because of the changes to the Senate's business program, a number of senators were unable to attend the visit. The committee may accordingly seek a second visit in the next sitting period.

While the committee is yet to meet to discuss the demonstration, I would like to bring to your attention one matter which became apparent during the visit to the operations room. As you are no doubt aware, there are four cctv cameras internal to the Senate wing, in the vicinity of the Senate entrance, from which images are recorded on a constant, 24-hour basis. These recordings are retained for a period of 8 weeks.

It was explained to committee members that this constant recording is an exception – which exists for sound security reasons – to the general rule that images from cameras in the Senate wing corridors are only recorded after hours. The cameras each operate such that they have a particular home focus – a default view along the outer Senate corridors. Committee members noted that the home focus of each of the two Senate first floor cameras captures virtually a full view of a senator's office door. Officers in the operations room demonstrated that the home focus of each camera could be shifted in a way that appeared to serve the security function of monitoring the corridor without including the view of the senator's door.

I would like to suggest that the positioning of these cameras be reviewed and changed, so that the home focus for each is permanently refocused in the manner demonstrated. I understand that officers in the operations room would require authorisation to make such changes.

I also note that the equivalent cameras on the Senate ground floor may provide similar views of the entrances to the President's Office and the Deputy President's Office. It may be that you would wish to review the positioning of those cameras.

Similar issues may exist in relation to cameras adjacent to the House of Representatives entrance, although of course security officers did not demonstrate the coverage of cameras in the House of Representatives wing. This is a matter you may wish to raise with the Speaker.

Yours sincerely

Senator the Hon Jacinta Collins
(Chair)

RECEIVED
07 AUG 2014
Committee of Privileges

PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE STEPHEN PARRY

6 August 2014

Senator Jacinta Collins
Chair of the Senate Committee of Privileges
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Collins

Thank you for your correspondence of 18 July 2014 regarding the Closed Circuit Television (CCTV) cameras located in the Senate wing, following the visit by members of the Senate Committee of Privileges to the Parliamentary Security Operations Room on 17 July.

During the visit, CCTV footage from the cameras located in the Senate wing was demonstrated, with particular reference to those cameras that record 24 hours a day in the vicinity of the Senate entrance. In your letter you suggested that the positioning of cameras in the outer Senate corridors be reviewed and changed in relation to the visibility of entrances to offices.

I instructed the Department of Parliamentary Services to act on your suggestion. I am advised that the 'home' default focus of the two first floor cameras have, since you brought this to my attention, been zoomed in slightly to limit the peripheral views of the entrances to Senators' offices, whilst retaining the important security capability for which the cameras were designed and positioned. Minor zoom adjustments have also been made to the ground floor cameras to focus on the corridors and reduce peripheral inclusion of the entrances to my office and the Deputy President's office.

The Committee is of course most welcome to visit the Operations Room to view the changes.

Thank you for drawing this matter to my attention, which I have also raised with the Speaker.

Yours sincerely

(STEPHEN PARRY)

AUSTRALIAN SENATE

COMMITTEE OF PRIVILEGES

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pvinqcctvsp_19077

1 September 2014

Senator the Hon Stephen Parry
President of the Senate
The Senate
Parliament House
Canberra ACT 2600

Mr President

INQUIRY – USE OF CCTV MATERIAL IN PARLIAMENT HOUSE

As you know the following matter was referred to the Committee of Privileges on 18 June 2014:

> In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services (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.

The committee's inquiry involves questions about the authority for granting access to footage, and approving the release of images, from the cctv system in use in Parliament House; and particularly images from cameras in the Senate wing. Your predecessor, Senator the Honourable John Hogg, and the Secretary of the Department of Parliamentary Service, Ms Carol Mills have each provided the committee with information about the operation of the system.

The cctv system operates subject to a code of practice adopted in 2009 and most recently updated in 2011. Those codes were approved by the then Presiding Officers, after endorsement by the Security Management Board. The committee is not aware that senators and members have been consulted on the operation of these codes.

By contrast, the original protocols for the operation of the cctv system, adopted in 2003, were the subject of consultation with senators and members, including consultations with Party Whips and in the Joint House Committee.

The current code appears to allow access to footage and release of images, in some circumstances, on the authority of officers in DPS without reference to the Presiding Officers. This is contrary to the position in the earlier protocol for the Storage of and Access to Recorded Images, a copy of which is attached.

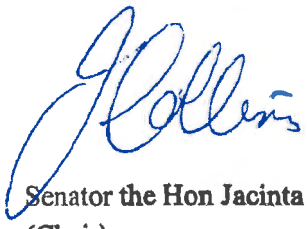
In particular, the earlier protocol provided that:

- the only reason for accessing the recordings will be to determine whether those images assist in any investigation of unauthorised access to the building or to a Senator/Member's suite, or of theft or damage to the building;
- the Executive Leader (Security) cannot release recorded images or show those images to anybody else, without the approval of the Presiding Officers;
- if the investigation of an incident leads to a requirement to access recorded images, the Presiding Officers will arrange, within seven days, for a report on the application of these protocols to be provided to the members of the Joint House Committee.

The committee has resolved to write to you to request that you and the Speaker consider reinstating the substance of the provisions of the original protocols relating to the Storage of and Access to Recorded Images during the committee's investigation.

I would be only too happy to meet with you to discuss this request, should that be of assistance.

Yours sincerely



Senator the Hon Jacinta Collins
(Chair)

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27 NOV 2014
Committee of Privileges

PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE STEPHEN PARRY

27 November 2014

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges

Dear Senator Collins

Use of CCTV material in Parliament House

I refer to your letter of 1 September 2014, on behalf of the Committee of Privileges, in which you raise the matter of authority to grant access to footage and approve the release of images under the current CCTV Code of Practice.

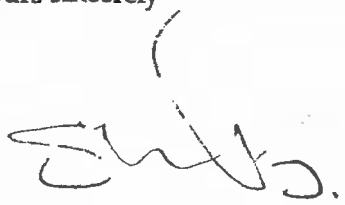
You noted that the Code of Practice appears to allow access to footage and release of images in some circumstances by Department of Parliamentary Service (DPS) officers without reference the Presiding Officers. You also drew my attention to the original protocols for the operation of the CCTV system, adopted in 2003, which required that images could not be released without the approval of the Presiding Officers, and requested that the Speaker and I consider reinstating the substance of the provisions of the original protocol relating to the Storage of and Access to Recorded Images during the Committee's investigation.

I can confirm that, following the concerns raised by the Finance and Public Administration Legislation Committee in the May 2014 Budget Estimates hearing about the use of CCTV material in Parliament House, a higher level of authorisation for the release of footage and images was immediately implemented, such that all requests made since 28 May 2014 for the release of footage or images have been put to the Presiding Officers for approval. The Speaker and I have directed that this practice remain in place until further notice.

This direction does not impede use of CCTV footage by Parliamentary Security Service officers or the Australian Federal Police in routine security operations or urgent circumstances.

I look forward to the Committee's report and any views about the content of the CCTV Code of Practice expressed so that the Committee's concerns can be taken into account in preparing a revised Code of Practice for the consideration of the Security Management Board and the Presiding Officers, following broad consultation across the Parliament.

Yours sincerely



(STEPHEN PARRY)

PRESIDENT OF THE SENATE

PARLIAMENT HOUSE
CANBERRA

27 June 2014

30 JUN 2014

Senator the Hon. Jacinta Collins
Chair
Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Senator Collins

Thank you for your correspondence of 23 June 2014 on behalf of the Committee of Privileges seeking information in relation to the Committee's inquiry into the use of CCTV footage by officers of the Department of Parliamentary Services.

My response to the Committee's questions is as follows:

(1) **What has been the role of the Presiding Officers, and their offices, in developing, implementing, maintaining and reviewing the Parliament House Closed Circuit Television Code of Practice?**

The Presiding Officers receive advice on new or amended versions of a CCTV Code of Practice through the Security Management Board. A new or amended Code does not take effect until such time as both Presiding Officers have approved it. The Presiding Officers may approve a Code, or take any other action deemed appropriate (such as requesting further information, granting conditional approval, or rejecting a Code).

When the CCTV Code of Practice was introduced in 2003, records show that significant consultation with parliamentarians (Joint House Committee and Party Whips) and the Press Gallery was coordinated through the Presiding Officers' offices.

(2) **What advice have the Presiding Officers sought or received from the Department of Parliamentary Services or the Security Management Board about the development, implementation, maintenance or review of the Code of Practice and, to the extent to which that any such advice relates to processes for the approval of release of images from the CCTV system, can copies of that advice be provided?**

Records show that the first Code of Practice was developed in 2002-2003, coinciding with the installation of an expanded CCTV network in Parliament House (including in the Senate and House of Representatives wings). Records show that the Presiding Officers were briefed five times prior to the Code being approved, as follows:

- An initial brief was given in late 2001 (copy not available), and a decision was deferred to the new Parliament.
- 22 February 2002 (copy attached). This was approved in principle, subject to some conditions.
- 25 October 2002 (copy attached), seeking endorsement of the Code of Practice, and recommending consultation with Party Whips.
- 1 August 2003 (copy attached). Additional information was sought.
- 17 September 2003 (copy attached). The suggested CCTV Code of Practice attached to that brief was approved on 8 October 2003.

The CCTV Code of Practice was substantially revised in 2009. The Presiding Officers were briefed on 9 January 2009 (copy attached) and approved the revised Code of Practice on 2 February 2009.

The current version of the Code of Practice was approved by the Presiding Officers on 22 June 2011 (copy attached).

There is no record of the President seeking, or being provided with advice about general processes for the approval of release of images, separate to the briefings on the protocols and then the Code of Practice, outlined above. The President has a role in approving the release of images in specified circumstances. In those cases, the President is specifically briefed on the request for the release of images.

(3) **Can you provide copies of each written report to the Security Management Board under section 46 of the Code of Practice, headed "Compliance Review"?**

As President I do not have copies of any of these reports. The Code of Practice specifies that the report is to be provided to the Security Management Board, rather than the Presiding Officers. As a statutory body, the Security Management Board has its own authority in accordance with the legislation and this is a matter for the Board. It should also be noted that neither the Presiding Officers nor their staff attend meetings of the Board.

(4) **How do the CCTV system and the Code of Practice deal with possible questions of privilege which might arise from the monitoring of activity within Parliament House?**

The CCTV Code of Practice has been developed in a way that is mindful of the sensitivities of the building and its occupants. It provides a range of measures designed to address the rights and privacy of senators and members, as well as other building occupants and visitors. This includes:

- limitations on recording hours for CCTV cameras in the Senate and House of Representatives wings, particularly during sitting weeks; and
- protocols around use of and access to footage and images, including:
    - designating positions of trust that have access to the systems; and
    - designating different levels of approval for release of images, depending on the purpose for which the images are sought.

(5) What role do the Presiding Officers have in dealing with such questions of privilege?

As President I have always sought the advice of the Clerk of the Senate on any matter of privilege and have always acted in accordance with the Clerk's advice and the procedures of the Senate.

Yours sincerely

JOHN HOGG

Sub · 22 Feb · 98

PARLIAMENT OF AUSTRALIA
OFFICE OF THE SECURITY CONTROLLER

Reference: MPLI2 15
Contact Officer: Mike Lucas
Telephone 6277 4700

Parliament House
Canberra ACT 2600
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22 February 2002

Madam President

Mr Speaker

Enhancements of access control to Security to Senators' and Members' Suites

Background

In late September 2001, I placed before you a submission, which recommended that you approve the installation of closed circuit television (CCTV) cameras in the Senate and House of Representatives Wing corridors. The cameras would be complemented by the proposed installation of an electronic access control system fitted to the doors of Senators' and Members' Suites.

The request for approval was considered necessary because the cameras would be located in private areas of the building, which could generate some controversy about invasions of privacy.

At the time, owing to the pending election, you expressed the view that the decision should be one for the Presiding Officers of the 40th Parliament.

Aim

The purpose of this submission, which has been endorsed by the Serjeant at Arms and the Usher of the Black Rod, is to re-submit the issue before you. I also wish to offer some additional facts, which, in our collective opinion, lend weight to the case for the installation of CCTV cameras in the corridors of the respective wings.

Since that time, opinions in relation to the electronic access control system to be adopted, as well as costings, are still subject to agreement and are currently under review, pending further consideration of all options available. It remains, however, that regardless of final selection of access control measures, the mainstay of the system would be an electronic surveillance capability.

Additional facts

Let me begin by indicating that funds for the camera project are available from within the jointly funded 2001-2002 Security Assets Replacements Program budget.

The scope and the cost of the project were examined and endorsed by the Steering Committee, which was chaired by the then Usher of the Black Rod with membership comprising the Serjeant at Arms, Department of the House of Representatives Clerk Assistant, Corporate Services and officials of the Joint House Department.

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The Committee gave the project the highest priority.

Enhanced security capabilities

The cameras will have the capability of providing a surveillance capability to detect and monitor the movements of any unauthorised persons in the two wings: this capability is desirable in the current threat environment

Discussion

The security of private areas of Parliament House is of paramount importance and surveillance cameras have been provided in a number of area as a consequence of this. They are however not currently located in the private areas of the Senate and House of Representatives wings.

At present the security in the Senate and House of Representatives wings relies on a sophisticated, and expensive, suite of locks and keys. The system requires keys to be issued and handled carefully to ensure the security and privacy of all suites. Unfortunately, these measures, while effective, do not appear to have been sufficient to eliminate some thefts of Commonwealth property.

By comparison, the arrangements in the Ministerial Wing include alarms on the doors to all suites complemented by CCTV cameras in corridors. The incidence of unauthorised access and theft in the Ministerial Wing is minimal.

Of more concern, however, is that threat levels to key Australian interests and infrastructure, including Parliament House, remains at heightened levels since 11 September. Previous major threats, such as large scale protest activity, has been against the front of the building and has never resulted in access being gained to private areas of the building.

The current threat suggests that the main objective is to cause maximum harm and impact. Actions to this end have been carefully planned and executed with deadly efficiency.

One such scenario of special concern is forced access to private areas of the building through the two side entrances by a group of intruders intent on causing maximum harm.

At present, Senators and Members, security and general staff would be exposed to significant risk if the outer perimeter is breached and with no comprehensive surveillance system inside their wings of the building, a person gaining entry by force would disappear upon leaving the point of entry.

Surveillance of corridors by CCTV would enhance capabilities to acceptable levels by permitting security control personnel to monitor the progress of intruders who could pose a threat to elected office holders and occupants.

Currently, in such a scenario, security personnel would be required to search corridors and expose themselves to considerable risk. The project would eliminate this requirement and enable the security executive to make an assessment of any emerging incident, allocate resources and monitor developments.

An additional benefit would be that a surveillance capability could assist in identifying any unauthorised access to Senators' and Members' Suites during times when the suites can be unoccupied for long periods, such as during recesses.

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Privacy

The privacy of video records of persons entering and leaving a suite will be assured; access, by computer passwords, to any video records will be restricted to designated security officers. It will not be possible to amend or alter logs of after-hours access to suites.

Coordination

My office has prepared this submission in consultation with the Usher of the Black Rod, the Serjeant at Arms and the Executive Leader, Technical, Joint House Department.

Recommendation

It is recommended that you approve in principal, the installation of a CCTV surveillance capability ~~as the platform~~ for the yet to be selected proposed enhancements to the electronic access control of Senators and Members Suites.

(MIKE LUCAS)
Security Controller

cc Usher of the Black Rod
Serjeant at Arms
Clerk, House of Representatives
Secretary, Joint House Department

- Agreed in principle but the authorised person to be approved by name as required by the Presiding Officers and tapes destroyed after a designated period as advised by the Security Controller.

Margaret Reid
28-02-02

28 2.02.

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22 FEB 2002
PRESIDING OFFICERS

LETTERS TO POs 15
SNR ADVISERS 19/11/02

RECEIVED
13 NOV 2002
Secretary
Joint House Department

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Parliament of Australia
Joint House Department

JHD

Submission

Submission number 96 Date 25 OCT 2002

THE PRESIDING OFFICERS

INSTALLATION OF CLOSED CIRCUIT TELEVISION CAMERAS IN THE SENATE AND HOUSE OF REPRESENTATIVE WINGS OF PARLIAMENT HOUSE

Recommendations

That you agree to:

1. the attached protocols; and
2. sending the attached letter to the Party Whips.

Background

In September 2001, the Security Controller wrote to the Presiding Officers to recommend that closed circuit television (CCTV) cameras be installed in the Senate and House of Representatives corridors. A second submission with additional detail was forwarded on 22 February 2002.
Attachment A

On 28 February 2002, Mr D Morris, on behalf of the Presiding Officers, responded to the Security Controller advising that the recommendation had been approved subject to the development of appropriate protocols relating to the management of recorded images.
Attachment B

On 20 March 2002, the Hon Leo Macleay MP asked a question regarding whether CCTV cameras were to be installed in the Senate and House of Representative wings of Parliament House. In his reply, the Speaker advised that "With the President of the Senate, I am presently considering proposals to install security cameras in the corridors of the House of Representatives and the Senate wings of Parliament House." The Speaker also indicated that wider consultation, including consideration by the Joint House Committee, would be undertaken before any installation occurs.
Attachment C

The proposed protocols are at **Attachment D**.

Consideration

The primary purpose of the installation of cameras in the Senate and House of Representative wings of Parliament House is to aid the tracking and apprehension of

persons obtaining unauthorised access to these areas of the building. During business hours, activation will only occur after an alarm has been raised. After hours, it is proposed to have the cameras operate following motion detector activation. This will improve scrutiny of the building at a time when occupation levels are very low and the opportunity to do damage or seek to obtain unauthorised access to Senators'/Members' suites is most likely to go undetected.

The proposed operational procedures and protocols put before you have been endorsed by all members of the Interim Security Management Board as not being overly prescriptive but still meeting the recognised "sensitivities" of recording in Senators'/Members' corridors with appropriate control of recorded images, while further investigation is carried out.

There has also been some discussion regarding persons you might want to consult regarding the protocols. Besides taking the matter to the Joint House Committee, do you also wish to refer the matter to all Party Whips for their consideration? If so, attached is a draft letter for your consideration.
Attachment E

The cameras have been purchased and are ready for installation. Installation will take approximately six weeks and can commence as soon as approval is received.

Conclusion

Not all persons will, of course, be happy with this proposal. However, it will provide CCTV coverage, if necessary, to the last remaining major areas of Parliament House not covered by such arrangements.

M BOLTON
Secretary; and
Chair of Interim Security Management Board

Recommendation (1) AGREE / ~~NOT AGREE~~

Recommendation (2) AGREE / ~~NOT AGREE~~

DATED this 12th day of November 2002.

NEIL ANDREW
Speaker of the House of Representatives

PAUL CALVERT
President of the Senate

The Speaker has agreed to these recommendations, but on the ground that consultation with the Joint House Committee should occur, in addition to the despatch of letter (as amended) to Whips.

SENATE LETTERS (DATED 20/11/02)
SENT OUT 21/11/02.

90

Senator Sue Mackay
Opposition Whip
Parliament House
CANBERRA ACT 2600

Senator Jeannie Ferris
Government Whip
Parliament House
CANBERRA ACT 2600

Senator Julian McGauran
National Party Whip
Parliament House
CANBERRA ACT 2600

Senator Lyn Allison
Australian Democrats Whip
Parliament House
CANBERRA ACT 2600

Senator Shayne Murphy
Parliament House
CANBERRA ACT 2600

Senator Len Harris
Parliament House
CANBERRA ACT 2600

Senator Bob Brown
Parliament House
CANBERRA ACT 2600

Senator Brian Harradine
Parliament House
CANBERRA ACT 2600

Senator Meg Lees
Parliament House
CANBERRA ACT 2600

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Tony Windsor MP
Parliament House
Canberra ACT 2600

Mr Michael Organ MP
Parliament House
Canberra ACT 2600

Mr Bob Katter MP
Parliament House
Canberra ACT 2600

The Hon Janice Crosio MBE MP
Parliament House
Canberra ACT 2600

Mr John Forrest MP
Parliament House
Canberra ACT 2600

Mr Jim Lloyd MP
Parliament House
Canberra ACT 2600

Mr Peter Andren MP
Parliament House
Canberra ACT 2600

Manually feeding each sheet once only is recommended

ATTACHMENT D

PROTOCOLS FOR THE MANAGEMENT OF RECORDED IMAGES—CLOSED CIRCUIT TELEVISION CAMERAS

Location of cameras

The cameras will only be installed at corridor intersections of the Senate and House of Representative Wings of Parliament House.

Normal operation

The normal operation of the cameras will be:

- on sitting days the cameras will only be activated, and be recording, at the Parliamentary Security Operations Room (PSOR) on the receipt of an alarm from an Senator's/Member's office or entry point to the building, or after hours (ie after sitting hours) by the detection of movement in the corridor.

- on non-sitting days, between 6.00pm to 8.00am, the cameras will only be activated, and be recording, at the PSOR by the detection of movement in the corridor.

- on weekends, from 6.00pm on Fridays to 8.00am Mondays, the cameras will be activated, and be recording, at the PSOR by the detection of movement in the corridor.

Alarm operation

If a security officer at an external entrance to Parliament House raises an alarm with the PSOR at any time regarding a known or suspected unauthorised entry to Parliament House, the cameras in the Senate and House of Representatives wings will be activated and be recording. The PSOR supervisor can authorise monitoring of the cameras to assist in apprehension of the person(s) who have apparently obtained unauthorised access, but must immediately notify the Security Controller or the Deputies. They will orally advise the Presiding Officers of the incident and before close of business on that day, provide them with a written report on the incident, including advice on what has happened to the recording—has it been retained, why and for how long.

Storage of and access to recorded information

- The recordings of the cameras are stored in secure satellite station rooms and any access to the records is electronically logged.

- These recordings are only accessible by the Security Controller, his Deputies or PSOR personnel authorised by the Security Controller. The only purpose for accessing the recordings will be to determine whether they assist in any investigation of unauthorised access to the building or to a Senator's/Member's suite, or of theft.

  Note: The Security Controller will recommend for approval by the Presiding Officers a list of names of security personnel authorised to view such recordings, and this list will be updated as necessary.

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Attachment D (continued)

- Each access to a recording will be separately documented with the system permanently archiving each access with full documentation of the time of access, the camera accessed and the individual who accessed the system.

- In order for access to the digital recording to be made available to any person—other than the Security Controller or his Deputies—a written request must be made to the Security Controller stating the name and station of the person seeking access, the reason for access and who will have access to the images.

- The Security Controller or his Deputies cannot release the recording or show it to anybody else without the permission of the Presiding Officers.

- As the size of the data storage capacity limits the amount of recording time available, stored data will be overwritten within three days of recording unless the record is locked or archived to another medium.

- PSOR personnel authorised to view images will review all tapes before they are expunged and recommend to the Security Controller the archiving of any tape recordings containing images of activity which might be associated with unauthorised access to the building or its environs.

- Tapes of images will only be retained at the direction of the Security Controller while an investigation is undertaken into possible unauthorised access.

- Once it has been determined that tapes do not contain any images required by the Security Controller, the images will be expunged and the tapes made available for re-use.

ATTACHMENT E

[Letter to all Party Whips—to be signed by relevant Presiding Officer]

Dear

The President (Speaker) and I have agreed in principle to the installation of closed circuit television (CCTV) surveillance cameras in the Senate and House of Representatives office wings of Parliament House. We will be consulting with Members of the Joint House Committee, and are now seeking your assistance in seeking feedback from other Members/Senators.

During the construction of Parliament House, a Parliamentary Security Operations Room was established, which included the capacity to monitor CCTV installations to provide electronic surveillance throughout the precincts and various areas of Parliament House, including public access areas and the corridors of the Ministerial Wing.

In the ensuing years, such installations have been enhanced to include most other areas of Parliament House, including the basement and underground car parks, etc.

The last major areas with no current CCTV surveillance capacity are the Senate and House of Representatives office wings. In this era of heightened security concerns following events of 11 September 2001, we have been advised that, if there were an unauthorised entry to Parliament House by either of the Senate or House of Representatives side doors, there is no electronic capacity to track the intruder(s) until such time as the appropriate response can be directed to the area.

We are cognisant of the sensitivities that some people may still feel about the opportunities for covert surveillance of perfectly appropriate activities. However, in this day and age, whenever you go to a petrol station or use an automatic teller machine, you are being filmed in case some illegal or unlawful activity takes place and such surveillance has been in place in the Ministerial Wing since Parliament House was opened in 1988.

So that these cameras cannot be used to cover the normal everyday events that occur in the Senate and House of Representatives office wings, we intend to authorise a set of protocols to govern the use of such cameras—they will:

- only be activated if an unauthorised entry to these areas occurs, and
- provide surveillance during the "quiet hours" when the opportunity to do damage or seek to obtain unauthorised access to Senators'/Members' suites is most likely to go undetected.

I attach a copy of the proposed protocols and would appreciate any feedback from you and your parliamentary colleagues, as soon as possible.

Yours sincerely

SPEAKER (PRESIDENT)

RECEIVED
Secretary
Joint House Department

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Parliament of Australia
Joint House Department

JHD

Submission

Submission number 72 ✓ Date 1 AUG 2003

THE PRESIDING OFFICERS

PROTOCOLS FOR THE MANAGEMENT OF RECORDED IMAGES – CLOSED CIRCUIT TELEVISION CAMERAS IN THE HOUSE OF REPRESENTATIVES AND THE SENATE WINGS OF PARLIAMENT HOUSE.

Recommendations

1) That you accept the additions to the protocols suggested by the Parliamentary Press Gallery Committee, except for corridor signage;
2) That you note my response to correspondence received from Mr Laurie Oakes;
3) That you agree to a 'purpose statement' being included in the protocols along the lines as outlined in the last paragraph of this submission.

Background

You will recall that at a recent meeting, the Joint House Committee accepted a set of protocols governing the above matter that I had put before them on your behalf.

Unfortunately, I and the Members of the Security Management Board had neglected to consult with the Parliamentary Press Gallery on this matter, one that I am sure you will realise has sensitivities for them.

The first to raise the matter with me was Mr Laurie Oakes who noticed the cameras being installed in the Press Gallery Area. I immediately apologised for this oversight and sent an email attaching relevant information to Mr Oakes and Mr Farr, President of the Parliamentary Press Gallery Committee. (Attachment 1)

I expected a negative response and substantial press coverage the following day. As you were both overseas I sent copies of the correspondence to the Acting Presiding Officers.

My immediate apology to Messrs. Oakes and Farr, together with a follow up phone call to them, calmed their initial concerns and there was very little press coverage and none of it sensational.

I wish to record here my appreciation to Senator Hogg as Acting President. He was in his Queensland electorate office and rang me after receiving my email offering help and assistance, if required. As it turned out none was required.

— M/A. CRANE

Re recommendation 1 — I presume this relates to Mr Morris' email a copy of which I sent to you. Please make an appointment with his key to see me [illegible].

15/8/03.

Consideration

Mr Farr, President of the Press Gallery Committee, sent me a letter in response dated 21 July which I was able to take to the Security Management Board meeting on 25 July.

Attached to the letter was a copy of the protocols with additions proposed by the Press Gallery Committee to meet their requirements. (Attachment 2) I believe the easiest way for you to get across the proposals is to read the attachment. I have highlighted the additions.

The Security Management Board agreed with me to recommend the additions suggested by the Press Gallery Committee to you except for the signage proposal. I have addressed this matter in an interim letter of response to Mr Farr. (Attachment 3)

Mr Laurie Oakes followed up our initial contact on this matter in an email letter of 24 July. (Attachment 4) Mr Oakes had concerns that the protocol did not have the force of law behind it and what would prevent the Presiding Officers overriding the protocols and providing images to ASIO, the Federal Police, or the chair of a parliamentary committee investigating a 'leak'.

I have assured Mr Oakes that this is not the purpose of the cameras and have responded to him pointing out to him that a number of measures have been included in the protocols which ensure political overview by government and opposition members as to what investigations you authorise and a regular independent audit control to ensure staff follow the correct procedures. (Attachment 5)

I suggest, that if you agree, a statement should be included in the protocols to the effect that "the purpose of the installation of closed circuit television cameras in the Senate and the House of Representatives wings of Parliament House and the capturing of images from them is to be used solely for the purpose of assisting in the tracking of unauthorised entry to Parliament House or for the investigation of break-ins, theft or damage within Parliament House."

M BOLTON
Secretary

Recommendation 1 [redacted]/DISAGREE Further advice required Please.
Recommendation 2 AGREE/~~DISAGREE~~
Recommendation 3 AGREE/~~DISAGREE~~

DATED this 13th day of August 2003.

NEIL ANDREW
Speaker of the House of Representatives

PAUL CALVERT
President of the Senate

Parliament of Australia
Joint House Department

JHD

Submission

Submission number 97 Date 17 SEP 2003

THE PRESIDING OFFICERS
Through: Secretary

PROTOCOLS FOR THE MANAGEMENT OF RECORDED IMAGES – CLOSED CIRCUIT TELEVISION (CCTV) CAMERAS IN THE HOUSE OF REPRESENTATIVES AND THE SENATE WINGS OF PARLIAMENT HOUSE

Recommendations

That you approve the attached CCTV protocols.

Background

Submission 72, dated 1 August 2003, sought your approval to a number of recommendations including a requirement to incorporate amendments to the originally agreed CCTV protocols. The amendments represented measures designed to address concerns raised by members of the Press Gallery.

The recommendation to approve the amended protocols was not agreed and additional advice was sought. The attached protocols incorporate advice relating to specific queries and clarify the processes to be adopted. The protocols now provide a clear, unambiguous and auditable set of processes that will ensure the security of any recorded images while enabling the CCTV system to be used as an integral security tool.

These amended protocols have been endorsed by the Security Management Board and accepted by the Press Gallery Committee.

T. CRANE
Executive Leader (Security)

APPROVED/~~NOT APPROVED~~

DATED this Eighth day of October 2003.

NEIL ANDREW
Speaker of the House of Representatives

PAUL CALVERT
President of the Senate

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

DPS ref: 14/2295

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges
Parliament House
Canberra ACT 2600

RECEIVED
-8 JUL 2014
Committee of Privileges

Dear Senator Collins

1. I refer to your letter of 23 June 2014, seeking information about the use of closed circuit television (CCTV) at Parliament House. I am pleased to provide the following information to assist the Committee.

Management of security issues at Parliament House

2. Before answering your specific questions, it is useful to provide some general background on the management of security matters at Parliament House.

3. The Department of Parliamentary Services (DPS) has day-to-day responsibility for security at Parliament House, subject to any roles performed by the Usher of the Black Rod and the Serjeant-at-Arms as a matter of the traditions of the Houses. This includes management of the CCTV system as part of its overall security functions. In managing its security functions, DPS works closely with the Presiding Officers in the exercise of their responsibilities and functions.

Presiding Officers

4. Parliament's authority to control and manage the parliamentary precincts is vested in the Presiding Officers. Generally, the Presiding Officers have responsibility for security in the parliamentary precincts as part of their control and management of Parliament. Traditionally, this jurisdiction was based on custom and practice and the inherent powers of the Presiding Officers to maintain proper arrangements for the functioning of Parliament.[1]

5. More recently Parliament has adopted a legislative basis for reposing that authority in the Presiding Officers – namely, the *Parliamentary Precincts Act 1988*. This provides that the precincts are under the control and management of the Presiding Officers (s 6(1)). While Parliament has authorised the Presiding Officers to discharge these functions, the Presiding Officers remain subject to the control of the Parliament in their exercise. The Presiding Officers may take any action they consider necessary for the control and management of the precincts, subject to any order of either House (s 6(2)). In relation to the Ministerial Wing in Parliament House, these powers and functions are also subject to any limitations and conditions agreed between the Presiding Officers and the Minister for Finance (s 6(3)).

6. The majority of the powers and functions of DPS security officers are authorised by the Presiding Officers under the auspices of their control and management powers. This includes, for example, security screening procedures on entry to Parliament House, mail room screening, and policies on the issue of security passes. As discussed in more detail below in response to your questions, the Presiding Officers also agreed to the installation of CCTV cameras and approved the associated protocols for viewing and recording of CCTV footage.

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1 See *House of Representatives Practice* (5th ed, 2005) at p 126.

Security Management Board (SMB)

7. While the SMB has existed since early 2002, it was established as a statutory body in 2005 as a result of amendments to the *Parliamentary Service Act 1999* (see s 65A). The function of the SMB is to provide advice as required to the Presiding Officers on security policy, and the management of security measures, for Parliament House (s 65A(5)).

8. The SMB consists of the Secretary of DPS, an SES employee of the Department of the Senate nominated by the President of the Senate in writing (currently the Usher of the Black Rod) and an SES employee of the Department of the House of Representatives nominated by the Speaker of the House in writing (currently the Serjeant-at-Arms) (s 65A(2)). The SMB is also able to invite other people to attend SMB meetings with the Presiding Officers' permission (s 65A(3)).

1) Information about the Parliament House CCTV Code of Practice, including:
- **How the Code was developed**

9. There have been three versions of the Code since CCTV cameras were installed in the House of Representatives and Senate Wings of Parliament House. CCTV cameras have been in place in public areas of Parliament House since the building opened in 1988, but were only installed in the House of Representatives and Senate Wings of Parliament House in 2003.

CCTV Cameras in the House of Representatives and Senate Corridors: Protocols for the Management of Recorded Images (2003)

10. A submission for the installation of CCTV cameras in the House of Representatives and Senate Wing corridors was first put to the Presiding Officers in late 2001, in response to security concerns following the September 11 terrorist attacks as well as a number of incidents of theft from parliamentarian offices. At the time, due to the pending election, the Presiding Officers expressed the view that the decision should be one for the Presiding Officers of the next Parliament.

11. From the records available to DPS (noting that the initial protocols were developed prior to the creation of the Department) it appears that the protocols were developed alongside proposals for the installation of cameras in the Senate and House of Representative Wing corridors.

12. A detailed submission was put before the Presiding Officers on 22 February 2002 by the Security Controller, endorsed by the Usher of the Black Rod and the Serjeant at Arms. One scenario of special concern identified in the submission was intruders gaining forced access to private areas of the building. Senators and Members, security and general staff would be exposed to significant risk if the outer perimeter was breached; a person gaining unauthorised entry would effectively disappear upon leaving the point of entry. Security personnel would be required to physically search corridors and expose themselves to considerable risk in doing so. Installation of CCTV cameras would eliminate this requirement by enabling security control personnel to monitor the progress of intruders who could pose a threat to elected office holders and occupants. An additional benefit would be that a surveillance capability could assist in identifying any unauthorised access to Senators' and Members' suites during times when the suites are unoccupied for long periods (eg, during recesses).

13. The submission recognised that there may be concerns about invasions of privacy. It proposed that access to any video records would be protected by password and restricted to designated security officers, and that it would not be possible to amend or alter logs of after-hours access to suites.

14. The submission was agreed in principle by the Presiding Officers on 28 February 2002, on the conditions that the Presiding Officers were to approve authorised persons by name, and that tapes were to be destroyed after a designated period.

15. A further proposal was put to the Presiding Officers on 25 October 2002. The proposal sought the Presiding Officers' agreement to proposed protocols for the management of recorded images. It noted that the proposed operational procedures for the management of recorded images had been endorsed by all members of the Interim SMB as not being overly prescriptive, but still meeting the recognised sensitivities of recording in the Senate and House of Representative Wing corridors, and with appropriate control of recorded images.

16. The proposal also suggested consultation by the Presiding Officers with Party Whips and included draft letters to be sent by the Presiding Officers to Party Whips for this purpose. The proposal was agreed by the Presiding Officers on 12 November 2002, on the grounds that consultation with the Joint House Committee should occur, in addition to consultation with Whips.

17. The proposed protocols were considered by the Joint House Committee. Minutes from a meeting of 9 December 2002 show discussion of the proposed protocols, including concerns raised by parliamentarians in relation to the effect of the CCTV cameras on their capacity to carry out their duties. It appears from later submissions put to the Presiding Officers that the Joint House Committee ultimately agreed to the proposed protocols. DPS was not privy to the consultations that took place between the Presiding Officers and other parliamentarians and any concerns that might have been raised directly with the Presiding Officers.

18. The Press Gallery was also consulted about the proposal, and suggested further additions to the proposed protocols. Amended protocols, again agreed to by the SMB, were put to the Presiding Officers on 1 August 2003. The recommendation to approve the amended protocols suggested by the Press Gallery was not agreed. The Presiding Officers instead sought further advice.

19. A further proposal was put to the Presiding Officers on 17 September 2003 with protocols incorporating advice relating to specific queries and clarifying the processes to be adopted. The attached protocols (see **Attachment A**), which had been endorsed by the SMB and accepted by the Press Gallery Committee, were also approved by the Presiding Officers on 8 October 2003. The protocols operated until replaced in February 2009.

Operating Policies and Procedures no 10.18 – CCTV Code of Practice (4 February 2009)

20. A new draft Operating Policy and Procedure (OPP) was put to the Presiding Officers on 9 January 2009 (**Attachment B**). The draft was developed by reference to relevant standards and guidelines (including the *Australian Standard 4806.1-2006 (Closed Circuit Television)* and NSW Government policy statement and guidelines, and the *Surveillance Devices Act 2004* (NSW)), as well as previous protocols and consultations. The draft OPP was endorsed by the SMB, which considered the draft OPP to be consistent with previous approved protocols and consultations.

21. The draft OPP was intended to bring together all previous agreed and approved documents into one comprehensive operating procedure. A separate abridged version of the OPP was also developed for publication on the Parliament of Australia website. The draft OPP was approved by the Presiding Officers on 2 February 2009. The OPP operated until replaced in June 2011.

Operating Policies and Procedures No 10.18 – CCTV Code of Practice (23 June 2011)

22. The OPP was revised in 2011, alongside a significant system upgrade. The updates to the OPP were summarised as follows:
    a) clarification, reordering of content and changes to position titles;

b) removal of administrative procedures relating to the operations of the Parliamentary Security Operations Room (PSOR);
c) a new attachment summarising approval authorities; and
d) updates to reflect new technology arising from recent security projects, such as the new CCTV camera management system.

23. The updated OPP was endorsed by the SMB and approved by the Presiding Officers on 22 June 2011. This is the current version of the Code (Attachment C).

- **What consultations occurred with Senators and Members in developing the Code**

24. As discussed above, wide consultations occurred in relation to the initial installation of CCTV cameras in the House of Representatives and Senate Wing corridors and the development of protocols for the review of CCTV images. Consultation occurred with Senators and Members through the Presiding Officers and the Joint House Committee, as well as through consultation by the Presiding Officers with Party Whips. These consultations informed the development of the (then) proposed protocols, which were amended to take into account concerns raised.

25. The initial protocols as well as all further amendments to the Code have been endorsed by the SMB and approved by the Presiding Officers. Section 8 of the Code expressly provides that any expansion or addition to the CCTV system must be approved by the SMB. Section 8 of the Code also expressly provides that substantive policy changes to the Code must be approved by the Presiding Officers.

26. Members and Senators have also been directly consulted about other aspects of the CCTV system. For example, Parliament has approved proposals for the installation of additional cameras, pursuant to s 5 of the *Parliament Act 1974*.

- **What consideration was given to questions of parliamentary privilege in developing the Code.**

27. The issue of parliamentary privilege in relation to the ability of parliamentarians to operate and carry out their duties with freedom, as well as the privacy of parliamentarians and other building occupants more generally, were considered in developing the Code and its predecessors.

28. This is apparent from the process surrounding the initial proposal to install cameras in the House of Representatives and Senate Wing corridors and the associated development of the protocols. The proposal put to the Presiding Officers on 25 October 2002 (discussed above) noted that the draft protocols had been developed having regard to the sensitivities of recording in S the House of Representatives and Senate Wing corridors. As described above, a comprehensive consultation process was undertaken in relation to the proposal, giving Members and Senators opportunities to raise any concerns about parliamentary privilege and any potential impact on their ability to carry out their duties. Concerns that were expressed by Members and Senators appear to have been raised and considered by the Joint House Committee in its discussion of the proposed protocols (discussed above).

29. As outlined above, subsequent versions of the protocols have been approved by the SMB and the Presiding Officers. We are not aware of any concerns about parliamentary privilege being subsequently raised by the members of the SMB (including the Usher of the Black Rod or the Serjeant-at-Arms) or the Presiding Officers in approving the new protocols.

30. Considerations of parliamentary privilege and privacy of building occupants continue to underpin the operation of the CCTV system in the House of Representatives and Senate

Wing corridors, which record only for limited hours. Most CCTV cameras in the House of Representative and Senate Wings record only between 6pm and 8am Monday to Friday (and 24 hours a day on Saturday and Sunday). Similarly, CCTV cameras in the Press Gallery corridors record only between the hours of 10pm and 8am each day. All other CCTV cameras, including the Ministerial Wing corridors, operate on a 24/7 basis to allow full monitoring and playback.

31. Further, the Code provides limitations on access to any recorded CCTV footage. Access to and release of images is only to occur as permitted under the Code, which restricts access to and release of images to certain purposes and requires the authorisation of certain approved persons. The authorisation to approve use or release of CCTV footage varies depending on the nature of the request, and the contents of the footage.

32. Finally, these matters are also reflected in the key principles for the operation of the CCTV system set out in Attachment A to the Code. The key principles include the following:

> The CCTV system will be operated with due regard to the privacy and civil liberties of the individual Senators, Members, other building occupants and the public, including the right to freedom of religious and political expression and assembly.

2) Information about the architecture of the CCTV system, the principles underlying that architecture, and its different modes of operation; and the purposes which are intended to be met by the different elements of the system and by its operation in different modes

33. The architecture of the CCTV system and its different modes of operation are set out in the Code.

34. The CCTV system consists of colour CCTV cameras, monitors, control panels and a digital video recording system. Cameras are installed at various points throughout Parliament House and external cameras operate throughout the parliamentary precincts. Some cameras are fixed, but most are capable of being panned, tilted and zoomed by operators to enable effective monitoring. The CCTV cameras only display and record images; they are not capable of playing or recording sound.

35. Monitors are installed in a number of locations. As described at Attachment D to the Code, the majority of monitors are at security points around the building, and have access to footage (with no playback capacity) from a restricted number of cameras necessary to perform security functions at those points. There are then a smaller number of monitors restricted to more senior security officers (including Security Systems Administrators and the PSOR) and Australian Federal Police-Uniform Protection (AFP-UP) and Close Personal Protection (CPP) officers.

36. Officers have access only to the equipment and information necessary for the performance of their security functions in and around Parliament House. Officers who have access to cameras have appropriate security clearances to support their duties. The system supplier (BAE) has remote access to the system as and when requested by DPS system administrators. Remote access is logged by ICT and such access is permitted to enable immediate rectification of serious systems issues that cannot be addressed by DPS' internal resources.

37. Where monitors provide access to a number of cameras, the live-time images from some cameras may be on constant display (eg, cameras at significant locations or intercom cameras), while images from other screens may be displayed on rotation. Operators can

also choose to view images from particular cameras. This enables operators to use the CCTV system to follow a person of interest in case of a security incident. Operators using the CCTV system to follow a person of interest are required to report this action immediately. In cases where a door alarm is activated, the camera will automatically rotate to show the relevant door, allowing operators to determine what the cause of the alarm might have been and what further action needs to be taken.

38. Cameras located in the Prime Minister's Office and the Cabinet Suite are controlled and viewed only by CPP officers and approved AFP-UP officers. These cameras cannot be viewed by the PSOR or other security points, and the officers in these locations only have access to specific cameras relevant to their security functions for the Prime Minister. The cameras in the Cabinet Suite are not owned or operated by DPS, and operate on a stand-alone system.

39. All cameras are continuously operating and are capable of live-time monitoring. However, the ability to record images depends on the location of the cameras and the time of day recording is sought (as per Attachment B of the Code).

40. As noted above, most cameras in the House of Representatives and Senate Wing corridors record only between the hours of 6pm and 8am Monday to Friday and 24 hours a day on Saturday and Sunday, during both sitting and non-sitting weeks. It is not possible for these cameras to record images outside of these hours, even if any security incident arises. Currently there are four cameras on each of the House of Representatives and Senate sides of the building that record 24 hours a day. Two of these overlook the central entrance staircases on the first floor, and two overlook the internal entry/exit from the screening point on the ground floor.

41. Recorded images are generally saved for at least 8 weeks before being overwritten. Recorded footage can also be saved, which allows images of particular incidents to be put aside for further review and download if necessary. Access to recorded images is subject to authorisation as set out in the Code. Only Security Systems Administrators can make a copy of recorded CCTV footage. The Assistant Director, Security Support, has the capability to copy still images from recorded CCTV footage where authorised by the code, but cannot make a copy of the video footage.

42. The CCTV Camera Management System (CMS) is housed on the Parliamentary Computing Network (PCN). Previous security reviews have identified some risks related to the CMS, based on its location on the PCN. Based on an assessment of the likelihood and consequences of the risks, the possible costs of separating the CCTV system onto a separate isolated physical network and its effectiveness in reducing the identified risks, the SMB made a decision in 2013 to retain the CMS on the PCN. A separate domain controller and limited access accounts were implemented to further reduce the risks of unauthorised personnel gaining access to the CCTV system.

43. We would be happy to offer members of the Committee a tour, looking at key aspects of the CCTV system including the PSOR, if it would assist the Committee in better understanding the operation of the CCTV system.

3) A copy of the 'classified' version of the Code referred to during the Finance and Public Administration Committee's estimates hearings on 26 May 2014

44. A full copy of the Code, which is classified as security-in-confidence, is provided at **Attachment C**. Copies of the two previous protocols governing the release of images from the CCTV camera system are provided at **Attachment A** and **Attachment B**.

4) Copies of each written report provided to the Security Management Board under section 46 of the Code of Practice, headed 'Compliance Review'

45. We are not aware of any compliance reviews having been carried out under the Code.

5) Any other information you consider would assist the committee in understanding the manner in which the system operates

46. CCTV cameras have been an integral part of the security operations of Parliament House since the building opened in 1988, when cameras were in operation in the public areas. The network of cameras has been expanded over the years, including into private areas of Parliament House, as the security needs of the building have changed. A security review conducted as recently as 2011 recommended the installation of over 100 additional cameras to rectify coverage of existing blind spots. CCTV systems are much more cost effective than the increased staff levels required to achieve the same level of security without CCTV systems.

47. The CCTV system and associated policies have been designed in recognition of the fact that the system serves multiple purposes beyond pure 'security' functions. While the management and investigation of security incidents is the primary purpose of the system, a number of other functions are also clearly contemplated. For example, the CCTV system also assists in managing other safety concerns for Parliament House occupants: where smoke alarms are activated, the PSOR or Chief Warden are able to use live-time images from CCTV cameras to determine the cause of the alarm before activating evacuation procedures. This reduces unnecessary disruption to building occupants from false alarms, including potential disruption of parliamentary sittings.

48. DPS has in its position to a number of documents (particularly submissions to Presiding Officers and Committee minutes) referred to in this submission which may assist the Committee's consideration of this matter. Should the Committee wish to be provided with these documents, please advise me of this; we will seek the approval of the Presiding Officers to make the documents available to the Committee.

Please do not hesitate to contact me if you require any further clarification or information.

Yours sincerely,

Carol Mills
Secretary

8 July 2014

CLOSED CIRCUIT TELEVISION (CCTV) CAMERAS IN THE HOUSE OF REPRESENTATIVES AND SENATE CORRIDORS PROTOCOLS FOR THE MANAGEMENT OF RECORDED IMAGES

Purpose

The installation of closed circuit television (CCTV) cameras in the Senate and House of Representatives wings of Parliament House and the capturing of images from them is solely for the purpose of assisting in the tracking of unauthorised entry to Parliament House and for the investigation of break-in, theft or damage within Parliament House.

Location of Cameras

CCTV cameras have been installed at corridor intersections of the Senate and House of Representatives wings of Parliament House.

Normal Operation

All cameras are constantly active. However, during normal operation the images recorded by all cameras are immediately overwritten. No recorded images are retained unless an incident has occurred. Where an incident has been indicated and images recorded, access to that recording is restricted. An incident, leading to the retention of a recorded image, will result from the following:

- On sitting days - on the receipt of an alarm from a Senator's or Member's office or entry point to the building, or, after-hours (ie after sitting hours) by the detection of movement in the corridor.

- On non-sitting days - as above, except that recording following movement detection in the corridor will apply between 6.00pm and 8.00am.

- Press Gallery:
  On sitting days - as per the Senate and House of Representatives.
  On non-sitting days - by the detection of movement in the corridor between 10.00pm and 8.00am.

Alarm operation

At any time, if a security officer at an external extrance to Parliament House raises an alarm with the PSOR regarding a known or suspected unauthorised entry to Parliament House, the cameras in the Senate and House of Representatives wings will be activated and display live-time images. The Executive Leader (Security) has authorised monitoring of the cameras by PSOR staff to assist in apprehension of the person(s) who have obtained unauthorised access to the building. All instances of control and monitoring of the cameras are recorded on an external electronic log. The Executive Leader (Security) (or his/her nominated temporary replacement) will verbally advise the Presiding Officers of the incident and, before close of business on

that day, provide them with a written report on the incident, including advice on the capture and retention of recorded images.

Storage of and Access to Recorded Images

- Where surveillance by the PSOR results in the creation of a record of personal information concerning an individual, the collection, use, storage and disclosure of that record is regulated by the *Privacy Act 1988*.

- Recorded images are stored remotely in secure satellite station rooms. All access or attempted access to the recorded images is electronically logged.

- Details of incidents leading to the recording and storage of images are electronically logged (date, time, and camera identification). The only reason for accessing the recordings will be to determine whether those images assist in any investigation of unauthorised access to the building or to a Senator /Member's suite, or of theft or damage to the building. Access to a recorded image will only be authorised if the details of the electronic log correspond to the details of a particular incident under investigation.

- The Parliamentary Security Service will avoid any actions that may unreasonably impinge upon the privacy and rights of people, other than those that may be under investigation.

- Authorised access to the recorded images is restricted to the two System Administrators employed within the Security Systems and Infrastructure Business Unit of the Joint House Department Security Group.

- Details of each access to a recording will be automatically and separately documented and permanently archived. Details will include the time of access, the camera accessed and the individual who accessed the system.

- In order for recorded images to be made available to any person, other than the Executive Leader (Security) (or his/her nominated temporary replacement), a written request must be made to the Executive Leader (Security) stating the name and position of the person(s) seeking access and the reason for access.

- The Executive Leader (Security) cannot release recorded images or show those images to anybody else without the approval of the Presiding Officers.

- Stored images will be retained for a period of six weeks to cover extended parliamentary adjournments and other non-sitting periods. After that six-week period, stored images will be overwritten.

- Stored images will only be retained beyond the above period, at the direction of the Executive Leader (Security), and only for the purpose of an investigation relating to a particular incident. Any stored images will be overwritten when such an investigation is completed.

- A regular programme of external audit of the electronic logs (initially every three months) will be initiated to confirm that:
    - any access to recorded images has been in accordance with these protocols, and
    - all instances of control and monitoring of the cameras within the private areas of Parliament House are in accordance with these protocols.

Camera Function Checks

The two System Administrators will regularly operate each individual camera to ensure proper function. These checks will occur each Friday between 08.30am and 10.30am. Each camera will be operated for approximately 30 seconds and no images will be retained.

Reports to the Joint House Committee

Following installation and activation of the CCTV system, if the investigation of an incident leads to a requirement to access recorded images, the Presiding Officers will arrange, within seven days, for a report on the application of these protocols to be provided to the members of the Joint House Committee. Where an incident has occurred wholly, or in part, within the Parliamentary Press Gallery area, the Press Gallery Committee will be advised and any views of this Committee have will be passed onto the Presiding Officers for their consideration.

Promotion of Protocols

A list of these protocols shall be made available to each licensee of space within the Parliamentary Press Gallery.

A sign indicating the purpose and times of operation of the CCTV cameras will be provided to each licensee of space in the Parliamentary Press Gallery.

Alteration of Protocol

Any proposed alteration to these protocols requires prior advice to the Joint House Committee and Parliamentary Press Gallery Committee.

Parliament of Australia
Department of Parliamentary Services

Governance Paper No 10.18 – Parliament House Closed Circuit Television Code of Practice – Public Version

Date:	23 June 2011	**Review:**	May 2014
Approved:	Secretary	**File No:**	07/1881
Contact:	Director, Security	**Extn:**	4701
Telephone:	(02) 6277 4701		

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Introduction

1 This document details the Code of Practice to be applied to the management of the closed circuit television (**CCTV**) system used in and around the Parliamentary precincts by the Parliamentary Security Service (**PSS**) and the Australian Federal Police – Uniform Protection (**AFP-UP**) within Security DPS.

2 This CCTV Code of Practice applies to all parliamentary departmental employees, AFP-UP employees and contractors who manage, operate or use the CCTV system, including viewing, storing, accessing and disposal of images.

3 The term 'images' for the purpose of this Code of Practice includes both moving and still pictures.

4 The CCTV system is part of the layered security response at Parliament House. The CCTV system is to be managed in accordance with the *Privacy Act 1988* taking a best practice approach and is based on the Australian Standard (**AS**) 4806.1—2006 Closed circuit television (CCTV) Part 1: Management and operation.

Statement of purpose

5 The CCTV system is intended to provide surveillance to areas in and around Parliamentary precincts (as established by the *Parliamentary Precincts Act 1988)*. Subject to this Code of Practice, the CCTV system is only to be used for the following purposes.

(a) Assist in the control and management of the Parliamentary precincts (including major or special events and traffic management).

(b) Assist in the day-to-day management of security services including investigation of security incidents, pre-planning of security exercises, emergency evacuation exercises and monthly validation exercises.

(c) Prevent, deter and detect crime, criminal damage, vandalism and public disorder.

(d) Assist in identifying, apprehending and where appropriate, prosecuting offenders in relation to crime, criminal damage, vandalism and public disorder.

(e) Provide evidence upon which to take criminal and civil proceedings.

(f) Improve general security monitoring in the areas around the precincts, both in terms of personal security and security of premises.

(g) Improve operational response of Security Patrols in and around Parliament House.

(h) Assist emergency services in responding to incidents.

(i) Identify and investigate incidents or accidents that could result in a compensation or insurance claim against the Commonwealth.

(j) For any other purpose approved in writing by the Presiding Officers.

Key principles

6 The following key principles apply to the operation of the Parliament House CCTV System:

(a) The CCTV system will be operated fairly, within the applicable law, and only for the purpose for which it is established.

(b) The CCTV system will be operated with due regard to the privacy and civil liberties of individual Senators, Members, other building occupants and the public, including the right to freedom of religious and political expression and assembly.

(c) The public interest in the operation of the CCTV system will be recognised by ensuring the security and integrity of operational procedures.

(d) DPS has primary responsibility for compliance with the purposes and objectives of the CCTV system for the maintenance, management and security of the system.

(e) Senators, Members and other building occupants will be provided with clear and easily accessible information in relation to the CCTV system.

(f) Regular monitoring and evaluation of the CCTV system will be undertaken to identify whether the purposes of the system are being complied with and objectives are being achieved.

(g) DPS staff employed to work with the CCTV system will uphold the Parliamentary Service values and Code of Conduct.

(h) Access to CCTV equipment will be restricted to DPS staff, AFP-UP Officers and Contractors where required as part of their duties. The ADSS may authorise others as required.

(i) Information recorded will be accurate, relevant and not exceed that necessary to fulfil the purposes of the CCTV system.

(j) Information will be obtained fairly and in the spirit of the privacy provisions of *Privacy Act 1988.*

(k) The retention of, and access to, images and recorded material will be only for the purposes provided by this Code of Practice.

Accountability

7 DPS acknowledges the importance of accountability in the management of the system. This de-classified version of the Code of Practice will be made available to the public via the Parliament House website. This public version of the Code of Practice excludes information relating to the technical specifications of the system, camera locations, system maintenance and operational procedures.

Management of CCTV system

8 The Assistant Secretary, Building Services has executive responsibility for the overall management of the system including managing adherence with the conditions laid down in this Code of Practice.

9 Any expansion or addition to the CCTV system must be approved by the Security Management Board. Substantive policy changes to this Code of Practice must be approved by the Presiding Officers.

CCTV cameras and recording

10 Cameras are not to be hidden and, as far as possible, will be placed in public view.

11 Signs that CCTV cameras are operating are to be displayed at all entrances to the building. The signs will allow people entering Parliament House to be made aware that CCTV systems operate within the building and precincts.

12 Recorded footage can be saved which allows images of incidents to be put aside for further review and download if necessary before being overwritten.

Saved images

13 For the purpose of this Code of Practice, the term 'saved images' refers to those images that are manually saved as described in Paragraph 12 of this document.

14 A Saved Images Register is to contain details of all saved images.

15 All saved images will be destroyed at the end of the retention period identified in the Saved Images Register, unless made the subject of an AFP application or required as evidence.

16 Ownership and copyright of all recorded material rests with the Parliament of Australia.

Control and use of CCTV equipment

17 CCTV equipment, including remote control of cameras, will only be operated by DPS staff, AFP-UP Officers and contractors where required as part of their duties.

18 Cameras will not be used to look into premises located outside of the Parliamentary precincts. Cameras will not be used to look into vehicles unless there is a justifiable security purpose.

19 A record is to be maintained of all monitored:

(a) persons of interest, suspect vehicles or items;

(b) suspected crimes and criminal damage;

(c) road traffic accidents;

(d) incidents that may result in a civil, public liability or property claim;

(e) public disorder; and

(f) any other incidents with a degree of seriousness.

Access to and release of images in any format

20 Access to and release of images is only to occur as defined in this document

21 Images will not be sold or used for commercial purposes.

22 The showing or release of images to a member of the public or in a public forum will require Presiding Officers' approval with a copy of this request to be sent to the Usher of the Black Rod and the Serjeant-at-Arms. Reasons for approval may include the needs of the AFP in connection with the investigation of crime; in any other circumstances provided by law; or in relation to an insurance or legal claim.

23 For the purpose of Paragraph 22, a member of the public is any person other than a parliamentary departmental or AFP-UP employee.

24 The release of images to the AFP or others, for intelligence purposes only, can be approved by the Assistant Secretary Building Services (and the Usher of the Black Rod and the Serjeant-at-Arms if images depict Members or Senators).

25 Copies of images provided to the AFP or others shall at no time be used for anything other than the purpose specified and identified when DPS releases the data.

26 The CCTV System Administrators are responsible for copying saved images to disc for evidence purposes when directed. All discs containing images handed to the AFP or others will be subject to entries in the Released Images Register, which will also record details of all data copied. The Released Images Register is to be securely stored.

27 Data copying procedures will be agreed with prosecuting authorities.

28 In the case of possible insurance or compensation incidents, the viewing of images by parliamentary department employees may be approved by certain departmental managers.

29 The release of images containing possible insurance or compensation incidents will require Presiding Officers approval.

Still images from video

30 Still images (photographs) from video will only be produced as authorised by the Director Security and the Assistant Secretary Building Services.

31 Still images can only be requested where they are required for the investigation of an incident, a possible crime or administration of security at Parliament House.

32 All still images will remain the property of DPS and will be listed in the Saved Images Register.

33 Printed copies of still images will display the date of printing.

34 The release of printed still images to PSS or AFP-UP employees, for intelligence purposes only, can be approved by the Director Security or Assistant Secretary Building Services (and the Usher of the Black Rod and the Serjeant-at-Arms if images depict Members or Senators)

35 Printed copies of still images, held by PSS or AFP-UP operational staff, will be destroyed within 31 days unless otherwise authorised by the Director Security.

Complaints

36 Complaints regarding the CCTV system and its operation must be made in writing to the Assistant Secretary Building Services, via the appropriate chamber department where applicable.

37 Where appropriate, the Assistant Secretary Building Services will appoint an independent person to investigate the complaint and provide a written report within an agreed period of time.

38 The report is to be presented to the Assistant Secretary Building Services, who will normally take action as appropriate within DPS guidelines and then advise the complainant. The ASBS will inform the SMB of the complaint and outcome of any subsequent investigation.

39 For this Code of Practice, the definition of an independent person is one who does not directly work in areas responsible for the management or maintenance of the CCTV system. The investigating officer can be staff of the Building Services Branch.

Compliance operating staff

40 This section applies to DPS and AFP-UP staff and contractors employed to work on the system. Staff and contractors are to comply with the following conditions.

(a) All staff working in the Parliamentary Security Control Room or having access to the CCTV system (including viewing images) will be required to sign a Declaration of Compliance with this Code of Practice. The Assistant Director Security Support will be responsible for the coordination of this requirement.

(b) The need for confidentiality, which can be enforced during and after termination of employment.

(c) Systems of monitoring and supervision established by DPS management and Contractor managers that will ensure compliance with the Code of Practice and operational guidelines.

41 All DPS and contract staff must be briefed on the conditions of the Code of Practice before commencing work on the CCTV system or within the Parliamentary Security Control Room area.

Breaches of the code

42 Breaches of the Code of Practice must be subject to proper investigation by, in the first instance, the person appointed by the Assistant Secretary Building Services to conduct an investigation. This person shall be responsible for making recommendations to the Assistant Secretary Building Services to remedy any breach which is proved.

43 Any use of the CCTV system or materials produced which is frivolous, or for private purposes, or is otherwise inconsistent with the objectives and procedures outlined within this Code of Practice is not permitted and will be considered misconduct.

44 Any DPS or AFP-UP staff member involved in incidents of this type will face investigation and appropriate disciplinary action in accordance with the relevant departmental policies.

45 Contractors found to have breached this code might not be permitted to work on-site again.

Compliance review

46 Compliance by DPS and AFP-UP staff will be subject to review. These reviews will be conducted as required and at least once per year. The Assistant Secretary Building Services will appoint an independent and suitably qualified person to undertake the review and provide a written report to the Security Management Board.

Alan Thompson
Secretary Department of Parliamentary Services
Chair, Parliament House Security Management Board

PARLIAMENT OF AUSTRALIA • THE SENATE

SENATOR JOHN FAULKNER
Labor Senator for New South Wales

RECEIVED
- 8 JUL 2014
Committee of Privileges

08/07/2014

Senator the Hon. Jacinta Collins
Chair - Senate Standing Committee of Privileges
Australian Senate
CANBERRA ACT 2600

Dear Senator Collins,

Thank you for your letter on behalf of the Senate Standing Committee of Privileges.

I believe my capacity to perform my duties as a senator has been impaired irreparably by the inappropriate use of Closed Circuit Television (CCTV) cameras within the parliamentary precinct. I do not accept that my movements, and the movements of the constituents I represent, within the corridors and rooms of this parliament should ever be under surveillance. The fact that these movements are under surveillance, and that concerns have now been raised on multiple occasions, indicates that senators cannot have confidence in their capacity to freely perform their functions and duties as senators.

Surely, preparing for the deliberations of Parliament and its committees, or fulfilling my responsibilities as a Senator requires an ability to read, write, think and converse, not to mention meet with concerned citizens or receive correspondence or documents from them, in private, and without improper interference that comes from lack of confidence in the Parliament House environment to protect the rights of senators.

A Code of Conduct for the management of the Parliament House CCTV (Governance Paper No 10.18 – Parliament House Closed Circuit Television Code of Practice – Public Version) [Appendix 1] covers the use of CCTV cameras in the parliamentary precincts. The only purposes of such cameras and the images they capture, are outlined in paragraph 5 of the Code. These purposes do not include tracking the movements of DPS staff members, or other citizens, properly and lawfully engaging with Senators. In my view, the use of CCTV footage and images for purposes outside the Code of Practice is an improper interference with the free performance of my duties as a senator, and an offence.

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The corridors of Parliament House are not locations where anyone can use a camera to take still photographs or moving images. There are media rules issued by the Presiding Officers that require permission to be sought and granted for filming and photography in Parliament House – and for very good reason. These rules are based on a number of important principles, including "non-interference with the operations of the Parliament or the ability of Members, Senators and other building occupants to fulfil their duties". Parliament House was supposed to be sacrosanct. Much of the parliamentary precinct has strict exclusion zones preventing access to persons without authority. Unauthorised use of CCTV cameras subverts these protections.

Any use of surveillance cameras in the corridors of Parliament House must be in accordance with the principles contained within the Code of Practice for CCTV footage. Like the media rules, that Code of Practice must recognise explicitly the principle of non-interference with the operations of the Parliament and the ability of Members and Senators to fulfil their duties. After all, those operations are the only reason why we have a Parliament House. Every other purpose is secondary to that fundamental rationale. If surveillance facilities are to be a part of the building operations, then no permitted use of CCTV footage or images can possibly be in conflict with that fundamental purpose. No part of the reason for using CCTV footage or images can ever be suspicions by the executive government, let alone a parliamentary department, that people are passing information to senators.

I also take my responsibility to protect any person who provides information to me with the utmost seriousness. I am very concerned that not only the livelihoods but also the health - including mental health, well-being and reputation of persons providing information to me has been compromised and damaged grievously. No Senator could ignore such a situation – it is utterly unacceptable.

The Committee of Privileges has specifically asked me about an article which appeared in *The Age* newspaper under the by-line of Phillip Dorling on the 12th of December, 2011.

The article was entitled: *Disorder in the House: bureaucracy under fire.*

The second paragraph of that article states:

"Departmental insiders also allege that in-house security cameras at the Federal Parliament House were used to try to identify whistle-blowers allegedly leaking information to Labor Senator John Faulkner, who is driving an inquiry into parliamentary administration."

At the Senate Estimates round immediately following the publication of the article, I asked questions of both the Department of the Senate and the Department of Parliamentary Services about this allegation in relation to the identification of whistleblowers.

Pages 40 to 45 of the Finance and Public Administration Legislation Committee Official Committee Hansard of Monday 13 February, 2012, provide the transcript of questioning of DPS by both myself and Senator Ronaldson. The evidence of senior DPS officers Mr Kenny, Ms Graham, and Dr Rodrigues is appended for the benefit of the Committee of Privileges [Appendix 2]. I also refer the Committee to the evidence of the Senate Clerk and Usher of the Black Rod on this subject earlier in the hearing on pages 7 to 8 [Appendix 3].

I accepted in good faith the evidence these officers provided to the Committee. I now firmly believe this acceptance was naïve and ill judged. Two years later, evidence has emerged that the alleged improper use of CCTV footage and images has indeed occurred, leading me to be more convinced than not that it also occurred on that earlier occasion. A pattern of conduct is therefore becoming apparent. Unless steps are taken to enforce the appropriate application of the CCTV Code of Practice, then the capacity of all Senators to freely perform their functions as Senators stands in jeopardy.

With regard to paragraph (b) of the terms of reference, I have some material that has been provided to me by subjects of disciplinary action in the Department of Parliamentary Services. As well as email correspondence, the material involves primary documentation generated by the disciplinary processes. In my view, the material speaks for itself but before I provide it to the committee, I believe it would be useful to understand the committee's thinking about the privacy of affected individuals and the appropriate level of confidentiality for the material.

There are several competing interests here. In no particular order, they include:

- the public interest in these matters being carefully examined with regard to the rights of all parties involved;
- the committee's (and the Senate's) undoubted right to publish any material submitted to it, and the often-expressed preference of the committee to receive evidence in public where possible;
- my rights as a senator to receive information of any kind that might assist me to carry out my duties as a senator, and the concomitant obligation on me to protect the sources of that information where appropriate;
- the natural justice rights of those who may be the subject of the committee's investigation to be informed of the details of any allegations to be made against them.

I acknowledge that the committee will no doubt wish to provide details of any potential allegations to DPS to enable a fair response. I also acknowledge that the identities of persons who have communicated with me will be deducible by DPS officers from the details of the particular code of conduct cases. I believe it is important, however, that the identities of those persons not be published to the world at large for obvious privacy reasons and to limit the distress caused to them by these events. If, as I understand it, DPS has now dropped code of conduct matters against several people, it is, in my view, even more important that the privacy and reputations of the individuals concerned be protected.

I would therefore be grateful for the committee's consideration of a request not to publish names or identifying details of those who have provided information to me. It is my preference to provide the material to the committee in full rather than with redactions. I hope that the committee is able to provide the assurances necessary for me to do so.

Yours sincerely,

JOHN FAULKNER

JULY 2014

COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION LEGISLATION COMMITTEE

Estimates

MONDAY, 13 FEBRUARY 2012

CANBERRA

BY AUTHORITY OF THE SENATE

Dr Laing: I think you would be comfortable sleeping tonight, yes.

Senator RYAN: Thank you. That is all I have.

Senator FAULKNER: I only really have one question to ask of the President. Perhaps it might be more relevant for the Clerk. I saw an article in the *Age* on 12 December. I assume that what is in the article is baseless, but let me read the second paragraph of it. This is an article headed 'Disorder in the House: bureaucracy under fire'. Then it has a subheading: ' Inquiry told of "dysfunctional" culture'. It says:

Departmental—

and I interpolate here that that is Department of Parliamentary Services in context—

insiders also allege that in-house security cameras at the Federal Parliament House were used to try to identify whistle-blowers allegedly leaking information to Labor Senator John Faulkner, who is driving an inquiry into parliamentary administration.

I wondered if the President or the Clerk had seen that statement and, having sighted it, took any action.

Mr Hallett: No.

The PRESIDENT: I know nothing about it. That is the first I have known of the statement. But I will see if—

Senator FAULKNER: I was perplexed. I am not suggesting for one moment that there would be any truth to it, because I do not know, of course.

Mr Hallett: Perhaps I might make one statement to assist. While the Clerk and I are both unaware of that article, there are strict rules about the use of the closed-circuit television system in the building, and I think most officers who have to deal with security matters, both in this department and in the Department of Parliamentary Services, are well aware of the rules, and to my knowledge those protocols are followed.

Senator FAULKNER: I sincerely hope so.

Mr Hallett: We are trying to balance privacy for senators, their staff and departmental officers against safety and security. Any requests for footage—for example, if there were a police inquiry into a theft—would generally come through the Serjeant and me and go to the Presiding Officers.

Senator FAULKNER: If it were the case—and I am not suggesting for a moment that it is—it would be a serious matter, would it not, Clerk?

Dr Laing: Yes, it would, because it is not just privacy grounds; it is freedom to go about your business as members of parliament, which is absolutely fundamental to the operations of any parliament.

Senator FAULKNER: Anyway, I am not suggesting for a moment that this is true. I do not know the basis of this. I will see if the Department of Parliamentary Services can help me.

Senator RONALDSON: On this question, if I may—and I was going to raise this with DPS as well—Mr Hallett, realistically you would have no idea who was accessing security footage and who was not, would you?

Mr Hallett: Not at a personal level, but—

Senator RONALDSON: So you really cannot comment on whether, indeed, these reports are correct or incorrect.

Mr Hallett: The only comment I can make is that a request for the release of footage would come to the President through me, generally from someone at a senior level in DPS—for example, if there were a police inquiry.

Senator RONALDSON: But if someone did not want to ask for official imprimatur because they were indeed spying, potentially, on whistleblowers then they could access that footage without you giving your consent or otherwise. Is that right?

Mr Hallett: That would be correct.

CHAIR: How are we travelling, Clerk, in the amount of references that have been going to committees? Has there been an increase this year thus far?

Dr Laing: As usual, we provided the committee with a snapshot of committee operations before the hearing. If we refer to that we can see that we are travelling pretty comparably with activity in the 42nd Parliament. We reported previously that activity in the last parliament was a bit of a record and activity so far in this parliament is pretty much comparable with the activity in the last parliament. There are lots of references. Committees are producing lots of reports to the Senate and undertaking lots of the things that committees undertake: consideration of submissions, public hearings et cetera.

CHAIR: Could you inform the committee whether there is any additional strain that has been felt by the secretariats of these committees? I understand there has been quite a movement of staff in some committees. That would surely be putting additional pressure to meet deadlines for reports et cetera?

Dr Laing: The office is staffed at reasonably high levels at the moment in comparison with previous years. There is always a turnover of staff, which happens in any organisation. That turnover in itself does create some pressures because new staff need to be trained and need to get on board with the inquiry. We have a comprehensive induction program and an ongoing professional development program with which we try to bring people up to speed as quickly as we can. But, yes, there will always be movements in staff. There will always be staff turnover.

As you would know, we also have a quite flexible staffing policies in the committee office whereby we can redeploy staff to areas of greatest need at fairly short notice so secretariats, which have a lower workload than some others at a particular time, if they are able to lend a hand with an inquiry for another committee, can do so. That is something that is quite an established practice now.

CHAIR: In your assessment, is there any evidence to suggest that the length of stay of staff over the last decade has increased? Has there been any change in the habits?

Dr Laing: Anecdotally, it seems to me that staff turnover is higher but I think that is because I am getting older and the longer I am here—

CHAIR: I am sure that is not right.

Dr Laing: Over the past small number of years we have had the retirements of a number of staff with a significant number of years service so it seems like there are a lot of new staff. But in fact, at the moment, about 12 per cent of our employees have over 20 years service.

Ms Graham: I would say that it was I think the ninth out of a number of recommendations, of which the first four were the primary concern to DSD, who conducted the review, and the majority of those recommendations have since been implemented.

Senator RONALDSON: So, Mr Kenny, we are effectively back to the future, aren't we? When do you expect this new technology to be put in place?

Mr Kenny: I will have to take that on notice; I do not have the project schedules with me.

Senator RONALDSON: Ms Graham, can you answer that question?

Ms Graham: Could you repeat the question?

Senator RONALDSON: When do you expect this new technology to be introduced, the isolation to take place?

Ms Graham: That particular project is not in my area of responsibility; I would not be able to answer that question.

Mr Kenny: Senator, we will take it on notice.

Senator RONALDSON: Let me ask another question. Mr Kenny, we have got a $7 million system. We had an isolated system under MaxPro. You have spent the $7 million. You have now had a security review which says it has got to be isolated out again. And you two are buck-passing in relation to what the cost is and when it is meant to be identified. What if there is a massive server breakdown, for example, during question time—do people reboot at that stage? What security are you providing for everyone in this place, from the Prime Minister down, if you already have identified from this review that you need to go back to where we were before? What level of security are you actually providing if this has been identified and you do not know when the new technology is going to be introduced or even what the cost of it is?

Mr Kenny: The security that we are providing is multiple layer, of which the CCTV cameras are just one part. When the building is operational—that is, when parliament is sitting—then the security is provided by the AFP outside and Bronwyn's PSS officers inside, including staff in the operations room who are monitoring the security cameras. If a server crashes then it is rebooted. Yes, I acknowledge that for the duration that that server is down, the cameras it is servicing are basically unavailable.

Senator RONALDSON: I find this all quite unbelievable. Is anyone at this table personally aware as to whether footage was accessed to identify alleged whistleblowers entering the offices of Senator Faulkner?

Mr Kenny: I can state categorically that I am not aware of any accessing taking place. I can certainly state that I did not make any request and Bronwyn has said to me, and she can repeat it for you, that she did not receive a request and nor did her director of operations receive such a request.

Senator RONALDSON: What is the nature of your inquiry into these allegations? Where is that at?

Mr Kenny: I am sorry, Senator, maybe I have misunderstood. Can you re-ask that question.

Senator RONALDSON: I presume this article was brought to your attention back in December last year. It is making it a very, very serious allegation that in-house security

cameras have been accessed to see whether whistleblowers had been approaching Senator Faulkner. I presume it was brought to your attention.

Mr Kenny: No, it was not. I was on leave.

Senator RONALDSON: Ms Graham, was it brought to your attention?

Ms Graham: I was aware of the article at the time. I made some inquiries at the time with my senior staff. I was not aware of a request for such footage. My initial thoughts were it would be a very unusual request that would be not entertained, and my senior staff have also—

Senator RONALDSON: It was most certainly an unusual request to find out whether someone had been approaching the office of a senator. It is a most unusual request. Did you report this to Mr Thompson?

Ms Graham: No, I did not.

Senator RONALDSON: Was this raised at a senior management level?

Ms Graham: This incident was reported in the media.

Senator RONALDSON: Yes, we know that.

Ms Graham: There are many matters reported in the media that either have or have not got substance to them. On that occasion I felt it was a matter that it did not have any substance and it was not pursued any further. Certainly we were not approached formally to investigate that matter.

Senator RONALDSON: So it would require you to be formally approached—by whom?

Ms Graham: No, I said earlier I made some inquiries with the staff who may have received such a request. When I was told that no-one received such requests, I considered the matter to not require any further action. Could I also state that the footage in corridors is not recorded during the day and so it would be impossible to go back and have a look at that footage anyhow.

Senator RONALDSON: When is it taken? You say it is not during the day. Is there any footage of those corridors?

Ms Graham: There is a complex schedule of when cameras record and do not record.

Senator RONALDSON: So it could have been taken. If someone had gone to my office, from what you are saying there could be security footage of that.

Ms Graham: It would depend on what time that was.

Senator RONALDSON: I appreciate that, but yes?

Ms Graham: Yes.

Senator RONALDSON: So you have a department under siege, you have the most heinous of allegations, that a senator's office has been identified for security footage purposes, or the viewing of it, to see if a whistleblower was approaching the senator's office and you did not take that to Mr Thompson or Mr Kenny or to senior management?

Senator FAULKNER: I assumed, and very much hoped, that this would not be accurate. I indicated that when I asked, as you would recall, the Clerk of the Senate and yourself about this when the Department of the Senate was before the committee a little earlier today. Let me

quote quite a substantial article in the *Age* newspaper, on page 3, that says in its second paragraph:

Departmental insiders also allege that in-house security cameras at the Federal Parliament House were used to try to identify whistle-blowers allegedly leaking information to Labor senator John Faulkner, who is driving an inquiry into parliamentary administration.

So I appreciate the fact that Mr Kenny and Ms Graham have told us that no such request was issued, and you can confirm that. That is what you answered to a question from Senator Ronaldson, that there was no request to do that.

Mr Kenny: Senator, I made no request. I am aware of no request having been made. Bronwyn received no request.

Senator FAULKNER: I appreciate hearing that. It is one thing to make no request and give that assurance, but you can also assure the committee, can't you, putting aside the status of the request, that no such activity took place? Let us put the request aside. You did not make a request, Ms Graham did not make a request and you do not know about a request. That is good. But you can also assure us, can't you, that there was no such use of in-house security cameras?

Mr Kenny: Noting Bronwyn's earlier comment about the staff who have access, that is the regime under which people are able to access—

Senator FAULKNER: Sorry, that is incomprehensible to me. Can you try that one again?

Mr Kenny: I have said that no request was made.

Senator FAULKNER: Yes, I know that no request was made. I am not asking about requests.

Mr Kenny: I am not aware of any use made to try and identify whistleblowers using the TV camera footage.

Senator FAULKNER: Are you aware of any use of such footage not specifically targeted at identify whistleblowers?

Mr Kenny: I not aware of that.

Senator FAULKNER: We are talking about in relation to yours truly.

Mr Kenny: I am not aware of any such request in relation to any specific senator.

Senator FAULKNER: I know you are not aware of it. I am not talking about requests. You keep talking about requests. I accept what you say, Mr Kenny. You have given that evidence; I have no reason to doubt it. I accept it. I am not talking about requests. I am talking about the activity. Let us try it again. Forget requests; I accept what you say about requests. I assume you would not say that if you did not mean it, and I accept that you mean it, and I accept what Ms Graham has said.

Mr Kenny: I am not aware of any activity to seek to identify using the CCTVs.

Senator FAULKNER: At all?

Mr Kenny: At all.

Senator FAULKNER: Whistleblowers or any other activity?

Mr Kenny: Any activity at all.

Senator FAULKNER: All right. Can you tell me who these departmental insiders are?

Mr Kenny: No, I cannot, and I do not know that they exist.

Senator FAULKNER: No-one saw fit to correct the *Age* newspaper, then? You are saying you do not think the story is accurate.

Mr Kenny: I do not believe it is accurate.

Senator FAULKNER: Did anyone from the Department of Parliamentary Services think then that a correction was in order?

Mr Kenny: I do not think so. I am sorry, Senator. This article was published in December, and I was not here, so I need to get some advice.

Senator FAULKNER: I am not saying 'you'; I used the word 'anyone'. That may not include you.

Mr Kenny: No, there was no dialogue with the *Age*.

Senator FAULKNER: Did anyone think it might be worthwhile contacting me given that, in the second paragraph of this story, there is an allegation that this occurred in relation to me and my office?

Mr Kenny: I would presume not.

Senator FAULKNER: You would presume not?

Mr Kenny: Yes, because I do not know of anyone having contacted you. I do not know if anybody—

Senator FAULKNER: Does anybody else know? You do not know. Does anybody else know? Did anyone think it was worthwhile contacting the senator who—

Mr Kenny: No, we believe not.

Senator FAULKNER: So I am clear: what, if any, action took place as a result of this claim?

Mr Kenny: Sorry for the delay, Senator. There was a discussion within the department, and the result of that discussion was that no action would be taken.

Senator FAULKNER: Who was involved in the discussion, and who made the decision?

Senator RONALDSON: And when?

Mr Kenny: I will ask Mark Rodrigues, who is the executive adviser to the secretary, to—

Senator FAULKNER: I am not suggesting for one minute that this activity took place. I just want to be assured that it did not.

Mr Kenny: And I have asked Mark to come to the table.

Senator FAULKNER: I have accepted that—well, you have heard what I have said.

Dr Rodrigues: The journalist approached the department with a number of allegations prior to publication of the article. We considered what the nature of the allegations was when they were put to us, and we decided at the time that we could not respond on record to the journalist, mainly because we had no way of substantiating what the journalist was telling us. Two weeks later, on the 12th, he published the article. At that point Alan Thompson had returned from leave. David Kenny was no longer acting secretary at the time; David Kenny was on leave as well.

Senator FAULKNER: Sorry—Mr Kenny was on leave too. Were you acting secretary when you were on leave?

Mr Kenny: No, I was acting secretary whilst Alan was away for a month in November.

Senator FAULKNER: So Mr Thompson has come back before your leave?

Mr Kenny: Yes.

Dr Rodrigues: There was a discussion about the article concerned. Alan Thompson and I had a discussion with the director of HR services concerning the nature of the allegations of bullying and harassment and so forth.

Senator FAULKNER: Bullying and harassment? What does that have to do with people spying on my office?

Dr Rodrigues: As I recall, the main—

Senator FAULKNER: You are not suggesting I am bullying and harassing people, are you?

Dr Rodrigues: No, Senator.

Senator FAULKNER: Just checking.

Mr Kenny: I think Mark's point is that there was a discussion about the article and there is reference to bullying in there, as well as the reference to your office.

Senator FAULKNER: Yes, but I am talking about whistleblowers allegedly leaking information to me. We have not got to bullying and harassment yet. We will get there a bit later on.

Dr Rodrigues: I was not part of any discussions in relation to the viewing of CCT footage.

Senator FAULKNER: All right. So there was an internal discussion and it was decided to basically leave it there—no further action. There was no response to the journalist, there was no response to me and there was no further action—and there was no correction, if you felt this was wrong, to the journalist or the *Age* newspaper.

Dr Rodrigues: As I recall, we had no means of ascertaining the veracity of the allegations.

Senator FAULKNER: So you do not know whether it is true or not. Is that what you are telling us now?

Mr Kenny: We do not know if—

Senator FAULKNER: If you do not know whether I was spied on.

Mr Kenny: No, that is not what I am saying. We do not know whether one of the DPS staff had a conversation about these allegations with the journalist.

Senator FAULKNER: It actually says 'insiders', plural, so it could be staff, it could be staffers, it could be insiders of any description.

Mr Kenny: Yes. I do not know what an 'insider' might mean, in comprehensive terms.

Senator FAULKNER: Does that mean that you do not know whether the allegation is true or not, or you just do not know whether someone said it?

Mr Kenny: I am saying I do not know whether someone said it.

Senator FAULKNER: All right; you do not know if someone, person or persons unknown, said it. I accept that. Do you know if it is true or not? Do you know if the allegation is true?

Mr Kenny: I have said that I believe it is not.

Senator FAULKNER: You said you believe it is not. Do you know it is not?

Mr Kenny: I am not aware of any attempt by anybody to identify whistleblowers or other persons using the camera systems around your office or any other senator's office.

Senator FAULKNER: You are not aware of any. You are not aware of that occurring. I will accept that. But you do not know if it occurred or not? I asked a question earlier what people might do replaying footage on their computers. I am not suggesting that this occurred at all, but the point is that you do not know, do you?

Mr Kenny: Not absolutely. If it did take place it was kept very much to itself.

Senator FAULKNER: Wow, what a revelation that is! If it did occur it was kept very much to itself. You have to be kidding, Mr Kenny.

Mr Kenny: Sorry, Senator, but what I am trying to say to you is that there was no attempt from the senior management to instigate this and there was no advice or awareness about it possibly taking place.

Senator FAULKNER: I accept that.

Mr Kenny: That is all I am trying to make clear.

Senator FAULKNER: You did go on and say a number of other things after that. Anyway, there was no communication with me, there was no communication with the journalist, there was no communication with the *Age* and there was no further action.

Mr Kenny: Yes.

Senator FAULKNER: The suggestion, call it allegation—I think allegation is a fair description—just lay on the table. At the end of this article it says:

The Age has also seen emails and memos that show incorrect and misleading answers to parliamentary questions were the subject of careful consideration by department executives.

Could you provide those emails and memos to the committee please?

Mr Kenny: Sorry, I am not aware of what these emails might be.

Senator FAULKNER: How would I be? All I know is what is said in the final paragraph of this article:

The Age has also seen emails and memos that show incorrect and misleading answers to parliamentary questions were the subject of careful consideration by department executives.

I would be very interested, and perhaps some other members of the committee would be too, in seeing the emails and memos. So, if they exist, please provide them.

Mr Kenny: I understand. Again, I can state categorically that the only dialogue—written, email and other memos—that has taken place with the departmental executives in terms of misleading answers to parliamentary questions relates to our investigations into the evidence that was proffered to this committee—incorrect evidence—last February and subsequently a misleading answer to a question on notice. All the investigations into those two events have been investigated, seeking to get very much to the bottom of it.

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

RECEIVED
19 SEP 2014
Committee of Privileges

DPS ref: 14/2295

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Senator Collins

I refer to your letter of 2 September 2014, seeking:

- answers to a series of questions posed in your letter;
- a submission from the Department of Parliamentary Services (DPS) addressing the terms of reference of the Committee's inquiry; and
- information about any other matters that the Department considers would assist the Committee's inquiry.

DPS has used its best endeavours to meet the due date of 19 September 2014 set by the Committee for the presentation of its submissions and responses to the Committee's enquiries. However, much of the material to be addressed, especially the Department's responses to the Committee's questions, requires detailed work by our senior security officers.

As you would appreciate, our security resources have been significantly diverted in the past week because of the increased terror threat level and the changing requirements for security at Parliament House. In a discussion with the Committee Secretariat on 18 September 2014, it was agreed that I would write to you to seek a short extension of time for the presentation of the Department's submissions. I would propose to have our submissions to the Committee by close of business on 26 September 2014.

In the meantime, I would like to deal with the first page of the Committee's questions to DPS, relating to matters addressed in the February 2012 estimates hearing of the Finance and Public Administration Legislation Committee. I regret to advise that current DPS officers are not in a position to answer these questions, as it is not within the knowledge of our officers, and is not (despite extensive searches) reflected in the department's records to any great extent. The officers who appeared at the hearing and who may have been involved in investigations of Senator Faulkner's queries at the time, both before and after the estimates hearing, are no longer employed by DPS (the most senior staff having departed in late 2012), and the questions posed by the Committee would require their response. If it would assist the Committee, DPS would be able to provide the forwarding addresses for those persons that the Department has on file. Please let me know if you would like us to follow up contact details for the relevant officers.

Yours sincerely

Carol Mills
Secretary
19.9.14

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

RECEIVED
26 SEP 2014
Committee of Privileges

DPS ref: 14/2295

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Senator Collins

I refer to your letter of 2 September 2014, seeking:

- answers to a series of questions posed in your letter;
- a submission from the Department of Parliamentary Services (DPS) addressing the terms of reference of the Committee's inquiry; and
- information about any other matters that the Department considers would assist the Committee's inquiry.

The Department's submission, which addresses the substantive matters in issue for the Committee's inquiry, follows from this letter. Thank you for allowing the Department some additional time to prepare this submission.

In addition to the submission, DPS is providing for the Committee's information and consideration some detailed legal advice which the Australian Government Solicitor (AGS) has provided to the Department. A copy of this advice is at **Attachment A** to the submission. While it is unusual for a Commonwealth department to share its confidential legal advice with the Parliament, in this exceptional case the Department considers that the Committee would be assisted by having access to considered and detailed legal advice on the facts in question, and the issue of parliamentary privilege.

The answers to the Committee's specific questions are contained at **Attachment B** to the submission. As per my letter to you of 19 September 2014, there are a number of issues relating to a 2011 matter which the Department is not in a position to respond to, but I am happy to provide details (where known) of those persons who might be in a better position to assist the Committee.

In respect of the treatment of DPS' submission and attachments, I note that:

- the main submission and the legal advice at Attachment A have been prepared with a view to maintaining confidentiality for the employees involved;
- the responses at Attachment B, and the reports and logs annexed to that Attachment, contain sensitive information, both relating to security arrangements at Parliament House and individual DPS employees.

While I would ask that the Committee consider not publishing documents at Attachments B, B1 and B2 in the interests of confidentiality, I otherwise note that DPS would welcome a decision to publish the main submission and the legal advice at Attachment A, as per a usual approach to a Senate committee inquiry.

This matter has received significant attention in both local and international media, in part stemming from discussion of an email purportedly from the Clerk of the Senate to the outgoing Clerk of the House of Commons. DPS has deliberately refrained from commenting on the matter publicly to avoid compromising the Committee's processes, despite having concerns about the Clerk having publicly expressed apparently concluded views on the matter (which might give rise to an apprehension of bias on the part of an adviser).

It is of course a matter for the Committee to determine what weight to give DPS' submissions and legal advice, and to form its own views on the matter. However, DPS is keen to ensure that the public has access to the full facts and information on this matter, and considers that it would be in the broad public interest for this information to be published.

I would be pleased to attend a hearing before the Committee to further explain the Department's position if required. I note that appearances before the Committee by any DPS officer would be the subject of a request to be accompanied by counsel.

Yours sincerely

Carol Mills
Secretary
26/9/2014

RECEIVED
26 SEP 2014
Committee of Privileges

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

Submission to the Senate Committee of Privileges: Use of CCTV in Parliament House

1. The Senate has tasked the Committee with reviewing the use of CCTV footage recorded in Parliament House. The specific situation that gave rise to the Senate's referral of this matter to the Committee came about because footage of a Department of Parliamentary Services (DPS) employee was used as evidence in an internal investigation into that employee's conduct; however DPS notes that the Committee's terms of reference, and subsequent enquiries of DPS, are slightly broader than simply referring to this particular scenario. The Committee has been asked to review:

    a. whether there was any improper interference, or any 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.

Summary of submission and introductory comments

2. DPS is pleased to assist the Committee's consideration of these matters. In DPS' submission the committee ought to be satisfied that the answers to questions a) and b) above are 'no', such that question c) does not arise.

3. On the matter of disciplinary action taken against an employee (referred to throughout the submission as Employee X), DPS submits that:

    a. there can be no finding that disciplinary action was taken against Employee X because of or in connection with her provision of information to Senator Faulkner. Such a finding would be directly inconsistent with the facts properly understood, including the timing of key events in the case in question;
    b. rather, an investigation was commenced in respect of Employee X only for proper and lawful reasons totally unconnected with any business with a senator. At the point the Secretary approved commencement of a preliminary investigation (to assess whether Employee X might have a case to answer under the Parliamentary Service Code of Conduct), no-one in DPS was even aware of any dealings between Employee X and Senator Faulkner (or any other senator). At all times thereafter, the investigation proceeded on the basis that no adverse inference or action could or should be taken against Employee X in respect of any dealings with Senator Faulkner. Accordingly, the investigation was commenced and undertaken in good faith by those involved with due deference to principles of parliamentary privilege; and
    c. it was reasonable in the circumstances to undertake the investigation in respect of Employee X. That course of action was consistent with the Department's approach on similar matters of bullying and harassment, and it is not the case that the matter for investigation was overinflated in order to serve as a pretext for some other, unlawful purpose.

4. On the matter of an improper interference, or attempted improper interference, with the free performance by Senator Faulkner of his duties as a senator, DPS submits that there can be no finding that there was an actual or attempted improper interference with those duties, where:
    a. DPS' actions in using CCTV footage as evidence in disciplinary proceedings was authorised under, and in accordance with, procedures approved by the Presiding Officers, and in circumstances where those procedures were applied for proper and lawful purposes;
    b. no issue was taken with Employee X's interaction with Senator Faulkner at any stage of the investigation process. Notwithstanding the incidental inclusion of footage that depicted that interaction as corroboration of Employee X's explanation (in part) of her attendance at Parliament House on the night in question, that footage played no role in the factual material underpinning the proposed findings against Employee X; and
    c. disciplinary action was not taken or proposed to be taken in connection with or in reliance upon Employee X's interactions with Senator Faulkner, but rather for unrelated proper and lawful reasons.

5. As a result, DPS submits to the Committee in the strongest terms that there can be no finding of contempt made against DPS or its officers or employees in respect of this matter.

6. DPS notes that the terms of reference for the Committee's investigation are somewhat broader than only dealing with the matter involving Employee X. DPS assumes that the other issue of concern relates to a matter in 2011-12, as referenced in the Committee's questions to DPS on 2 September 2014, although it is not clear whether the Committee's consideration will extend more broadly than those issues. As noted in Ms Mills' letter to the Committee Chair on 19 September 2014, DPS has conducted extensive searches of records relating to the 2011-12 matter, but has been unable to find materials that might assist the Committee on this matter. Given the passage of time and change-over in staffing, the answers to the Committee's questions on the 2011-12 matter are unfortunately not within the knowledge of current DPS employees. To the extent that it would assist the Committee's inquiries, DPS has offered to provide contact details (where known) for the former DPS officers who may have a better knowledge of the matter.

Commentary about DPS' submission

7. Firstly, DPS notes that it has no objection to the Committee publishing this submission, and the legal advice contained at **Attachment A**. Both documents have been prepared with a view to maintaining confidentiality for those employees involved in the matter. Ultimately, DPS considers that it would be in the public interest to have the submission and advice published, given that the matter has received significant attention in the media (both national and international) over the last few months. To date DPS has deliberately refrained from engaging in the public discussion in order to avoid compromising the Committee's proper consideration of the matter, but subject to the Committee being satisfied that disclosure will not prejudice its processes, DPS considers that it is in the broad public interest for its submission and the attached advice to be available to the public.

8. DPS notes that the material at **Attachment B** in part deals with the location and views of CCTV cameras, and DPS suggests that this Attachment should not to be published, as it goes to the security arrangements of Parliament House and is not otherwise publically available. Further, the documents at **Attachments B1** and **B2** have been provided without redaction, and DPS notes that publication of that report would disclose confidential information about employees.

9. DPS has been greatly assisted in preparing this submission by the most senior lawyers of the Australian Government Solicitor (AGS), who have significant expertise in matters relating to parliamentary privilege. Further, AGS has provided legal advice to DPS about the use of CCTV footage taken within Parliament House in disciplinary matters (advice at **Attachment A**), with a view to both informing DPS' submissions to the Committee and to assist DPS more broadly, for example in advising the Presiding Officers on a range of matters relating to the CCTV Code of Practice. The legal advice deals in detail with the law of parliamentary privilege, with reference to the relevant legislation, case law and resolutions of the Senate, and the specific facts of the case in question.

10. DPS acknowledges that the AGS advice and these submissions are somewhat at odds with advice provided by the Clerk of the Senate to Senator Faulkner on this matter (advice tabled with the Finance and Public Administration Legislation Committee on 26 May 2014, copy at **Attachment C** to this submission). While acknowledging the Clerk's usual role as adviser to the Senate on matters such as these, DPS submits, with respect, that the Clerk may not have had access to the full background facts prior to providing her advice and that this is likely to have influenced the findings in that advice. DPS submits that the Committee ought to prefer DPS' submissions and AGS advice on this matter in light of that.

Facts and background

11. On 19 February 2014, a DPS employee (Ms A) approached the Secretary of DPS, having received an anonymous, typewritten note in her 'in-tray' the previous evening (or, possibly, that morning, prior to Ms A's attendance at work). Ms A worked in the Hansard area of Parliament House.

12. The anonymous note seemed to be written by another Parliamentary Service employee. The terms of the anonymous note could hardly be described as constructive. Rather, its tenor and text were belittling and accusatory, and the author is likely to have recognised/intended that it may cause hurt and distress to Ms A[1].

13. Ms A raised receipt of the anonymous note with the Secretary of DPS, who suggested that Ms A approach HR Services about the note, as a potential behavioural issue on the part of the person who had left the note. Ms A advised HR that she was concerned that the anonymous note may have been left by Employee X, based on a range of longstanding issues between them and various expressions contained in the note. Employee X used to work with Ms A, but at the time was working in the HR area of the Senate in Parliament House.

14. On 20 February 2014, HR Services employees approached the Security Branch within DPS with a view to identifying persons (connected to Ms A) who may have attended Parliament House after hours on the evening of 18 February. A check of the 'swipe access' records identified Employee X as having entered Parliament House at 9.31 pm that evening. No other 'candidates' emerged apart from Employee X.

15. HR then approached the Assistant Director, Security Support, for approval to view CCTV footage to confirm Employee X's entry into, exit from, and movements within, Parliament House on the evening of 18 February 2014. This approval was sought because access to, and use of, CCTV footage within the parliamentary precincts was controlled, at the

[1] Ms A was, in fact, significantly distressed by the note. See paragraph 42-43 below.

time, by a policy document entitled Operating Policies and Procedures No 10.18 – CCTV Code of Practice (the Code), which was endorsed by the Presiding Officers of the day (being the President of the Senate and the Speaker of the House of Representatives) pursuant to authority reposed in them by the Parliamentary Precincts Act 1988. The Assistant Director, Security Support, approved HR's request to view the CCTV footage for the purpose of confirming Employee X's entry into, exit from, and movements within, Parliament House on the evening of 18 February 2014.

16. A review of relevant CCTV footage established Employee X's attendance at Parliament House that evening (carrying various papers), including entry and exit via the Senate entry, and attendance near the Hansard area where Ms A worked (a number of camera views showed Employee X proceeding to the area outside the entrance to Hansard, then leaving the vicinity of Hansard). The footage inspected showed that Employee X did not enter the area where she was then working. The footage also showed that when Employee X exited the building she was no longer carrying any papers.[2]

17. On the basis of this information, on 25 February 2014 the Secretary of DPS was asked by HR Services to approve a preliminary investigation to assess whether Employee X might have a case to answer under the Parliamentary Service Code of Conduct (set out in s 13 of the *Parliamentary Service Act 1999*). The Secretary of DPS acceded to that request.

18. On 26 February HR asked Employee X, via a letter, to explain her attendance at Parliament House on the evening of 18 February 2014. The letter sent to Employee X set out all of the (then known) material facts concerning the preliminary investigation, and sought an explanation from Employee X of her 'precise movements whilst in the building'.

19. Employee X advised (on 27 February) that she entered Parliament House on the evening in question in order to return some papers to her workplace. She stated that she had not been able to remember the code to enter her work area 'so I didn't come in [t]here'. Significantly, Employee X did not explain what she had done with the work papers she was allegedly carrying given her inability to enter her workspace, and did not give any account, as requested, of her 'precise movements whilst in the building'.

20. DPS regarded Employee X's explanation as unsatisfactory, and potentially dishonest. This is because the CCTV footage showed three matters of significance which were not adequately explained by Employee X: first, Employee X at no stage even entered the corridor leading to the area. The closest she got to her work area was when exiting the lift on the first floor (immediately above the Hansard area, and around the corner from), at which point she turned left (along the first floor link way in the direction of the outer corridor), rather than proceeding toward secondly, at some stage between Employee X's entry to the building and her walking along the first floor Senate wing corridor, she acquired a brown envelope. An analysis of the apparent route taken by Employee X on the evening of 18 February indicated that 'Hansard [where Ms A worked] would appear to have been the only unlocked work area to which she could have gained entry' in order to acquire the envelope. Yet Employee X asserted that she did not enter that area at all; and thirdly, Employee X offered no explanation whatsoever for entering the building with paperwork and leaving the building without it.

21. Around this same time, a security officer located additional CCTV footage, which recorded other movements of Employee X in Parliament House on the evening of 18

[2] At this stage the identified CCTV footage did not capture Employee X's entire route – ie she was 'lost' for a time. This is not unusual, given the number of cameras that need to be viewed to establish a full route.

February 2014[3]. That footage showed (for the first time) Employee X approaching a Senator's office and placing an envelope under the door of the Senator's suite. This information was communicated to the Secretary on 27 February, whereupon the Secretary responded that 'contact by individuals with parliamentarians is not something we monitor...'. Accordingly, the footage relating to the visit to the Senator's office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator's office on the evening of 18 February 2014.

22. On 12 March 2014, the Secretary approved a recommendation that a formal Code of Conduct process be instigated against Employee X, solely in connection with the anonymous note that was left in Ms A's in-tray. No reference to Employee X's visit to the Senator's suite was included in the briefing.

23. A DPS employee was then appointed to investigate and determine whether Employee X had breached the Parliamentary Service Code of Conduct by attending Parliament House after hours, and leaving the anonymous and abusive note in Ms A's in-tray. The investigator was not, at that stage, briefed with any CCTV material relating to Employee X's visit to the Senator's office.

24. On 2 April 2014 the investigator provided details of the formal investigation to Employee X. On 7 April the investigator requested that the Security Branch save all available CCTV footage of Employee X's attendance at Parliament House, and this was approved by Security Branch senior staff with authorisation to undertake this work under the Code. This request was to ensure that the footage was not deleted prior to the completion of the investigation.

25. On 14 April 2014 Employee X provided a response to the allegations, and at this stage noted (for the first time) that there had been two reasons for her visit to Parliament House on the evening of 18 February 2014: firstly, to return documents to her workplace; and secondly, 'I also had some personal business with a Senator and left documents at the Senator's office'. DPS notes that this explanation stops well short of suggesting, let alone establishing, that Employee X's visit to the Senator's office was something 'done in the course of, or for purposes of or incidental to, the transacting of the business of the Senate'.

26. On 29 April 2014 the investigator asked to be provided with all the CCTV footage, and this was approved, pursuant to the Code, by the Assistant Secretary, Building Services[4]. The footage was provided to the investigator (including the visit to the Senator's office).

27. On 13 May the investigator sent a draft investigation report and CCTV footage to Employee X, requesting a response by 23 May. The draft report recited the investigator's preliminary findings about, inter alia, the route Employee X had walked on the night in question, including her placing an envelope under the door of a Senator's suite. The draft investigation report recited Employee X's statement that she had 'personal business' with the Senator as part of Employee X's explanation for her presence in the building on the night in question. The draft report stated the investigator's preliminary view that this explanation failed to adequately account for Employee X's visit to Parliament House having regard to the balance of her route. The draft report of the investigator did not otherwise engage with Employee X's visit to the Senator's suite. The preliminary findings

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[3] The security officer had continued searching to establish the remainder of Employee X's route.

[4] The job title is now Assistant Secretary, Security – the branches have been restructured. For the purpose of the authorisations under the Code, the Assistant Secretary, Security has the same responsibilities and functions for security at Parliament House as the former Assistant Secretary, Building Services.

in the draft report focussed on the leaving of the note in Ms A's in-tray, particularly whether this was done by Employee X and whether this amounted to a breach of the Code of Conduct.

28. Employee X requested, and was granted, a short extension of time (to 26 May) to respond to the draft investigation report.

29. On Monday 26 May the Senate Committee on Finance and Public Administration (sitting in Estimates) raised a question about the use of CCTV footage for Code of Conduct investigations as a possible breach of parliamentary privilege. The issue was referred to the Privileges Committee for inquiry. Recognising the likelihood that some time would elapse in resolving that issue, and the undesirability of a Code of Conduct process remaining unresolved for a potentially substantial length of time, the Secretary ceased the investigation prior to any finding being made.

30. Employee X has subsequently left the employment of DPS for reasons not connected to the Code of Conduct investigation or the CCTV footage issue.

Commentary on the facts

31. The key conclusions that DPS says emerge from these facts, and particularly from the timing of events in this matter, are:
    a. a course of action in relation to suspected misconduct was determined prior to there being any knowledge of the alleged provision of information to Senator Faulkner (or any senator) by Employee X;
    b. the course of action (commencement of a preliminary, and subsequently formal, investigation of suspected misconduct) was taken for proper and lawful purposes, and was undertaken in good faith without reference to or reliance on footage depicting contact with a senator's office; and
    c. the use of CCTV footage and stills was properly authorised within the terms of the OPP10.18, and was authorised for proper and lawful purposes;
    d. at no stage did Employee X's engagement with a senator form any part of the basis or justification for undertaking an investigation or for any proposed findings against her.

32. In addition, DPS submits that each employee involved in the decisions to commence disciplinary proceedings, the approval of access to CCTV footage and stills as evidence, and the investigation process itself, will (if necessary) attest to their having proper and lawful intentions in performing their duties, and deny that information relating to the alleged provision of information to a senator formed any part of the reasoning for their actions.

33. DPS' detailed submissions, outlined below, are based on these facts and key conclusions.

Part A – disciplinary action against Employee X

34. It is most helpful to begin with submissions on the second element of the Committee's terms of reference, namely the issue of whether disciplinary action was taken against Employee X in connection with her providing information to Senator Faulkner. This is because DPS considers that a proper understanding of the disciplinary matter will assist the Committee in reaching the correct conclusions on the remainder of the issues in question.

35. In summary, DPS submits that:

    a. the timing of events cannot support a conclusion that disciplinary action was taken in connection with (let alone as a pretext for) Employee X's provision of information to Senator Faulkner;
    b. the rationale for commencing the investigation was in fact lawful and proper;
    c. the approach in Employee X's case was consistent with broader Departmental action on bullying and harassment in the workplace; and
    d. any suggestion that the mere fact of a reference to Employee X's approach to Senator Faulkner's office in the disciplinary proceedings somehow leads to the conclusion that the proceedings were taken *in connection with* that approach to Senator Faulkner is quite unsustainable. DPS investigators proceeded at all times on the basis that the legitimacy of Employee X's dealings with Senator Faulkner could not be (and were not) called into question.

36. From the outset, DPS acknowledges that a decision to take disciplinary action against an employee, in connection with or because they have given evidence to the Senate or a Senate Committee, or because they have provided information to a senator for the purpose of or incidental to Senate proceedings, could well infringe parliamentary privilege. However, this simply did not happen in the case of Employee X.

Timing of events

37. First and foremost, the timeline of the events in question clearly demonstrates that there was no causal connection between the taking of disciplinary action against Employee X, and Employee X's interactions with Senator Faulkner.

38. DPS submits that the leaving of the harassing note was the only reason for the commencement of disciplinary proceedings. In respect of the timing of this matter, it should be noted that, when the Secretary approved a preliminary investigation into the leaving of the note based on Ms A's complaint and HR Services' recommendation (on 25 February 2014), there was no suggestion that Employee X had had any contact with a parliamentarian. This information had not been discovered at this time, and was not discovered until the following day. Nonetheless, a decision was made to pursue a preliminary investigation, for the purposes of determining whether there was a reasonable suspicion that Employee X may have breached the Parliamentary Service Code of Conduct by leaving the harassing note. In short, it is implausible to suggest that the reason for taking a course of action included a matter that was not known to the decision-makers at the time of the relevant decision.

39. A preliminary investigation is part of DPS' ordinary administrative practice, and is common practice across Commonwealth employers in similar circumstances under the *Public Service Act 1999*. Its purpose is to help a decision-maker determine whether, for the purposes of the Department's procedures issued under section 15(3) of the *Parliamentary Service Act 1999*, there is a suspected breach of the Parliamentary Service Code of Conduct that ought to be dealt with by way of formal investigation under those section 15(3) procedures. Where a preliminary investigation fails to resolve an issue, or establishes that there is at least a reasonable suspicion that a person may have breached the Code of Conduct, it is usual practice to commence a formal investigation.

40. DPS acknowledges that it is apparent from the timeline that DPS officers knew of the additional information (relating to Employee X's approach to Senator Faulkner's office) at the time a decision was made to commence a formal investigation. However, it does not follow that this new information was taken into account or that it changed the rationale of

the decision-makers in determining a course of action. The course of action had been set in motion with the commencement of the preliminary investigation, for proper and lawful purposes referable only to the leaving of the harassing note. Rather, DPS submits that the relevant decision-maker (the Secretary) made a conscious decision *not* to take action in respect of Employee X's approach to Senator Faulkner, by effectively instructing that DPS could not consider that conduct and had no interest in the matter.

41. It is clear from the timing of events that the footage depicting Employee X's visit to a senator's office did not, and could not, influence the decisions to undertake the preliminary investigation or the formal investigation. The sole interest in commencing an investigation was to determine whether Employee X had delivered the harassing note to Ms A (as discussed in the following section).

Investigation for a proper purpose

42. DPS submits that the leaving of a harassing note for Ms A, in and of itself, was a proper and lawful ground on which to commence an investigation. Ms A was clearly distressed by the leaving of the note, and a number of DPS employees can attest to this fact, as Ms A interrupted a meeting between the Secretary and a number of other employees to alert the Secretary to the matter.

43. That distress was, in DPS' view, not unreasonable and not surprising, in light of a number of factors. Ms A had been managing a broad range of issues (complex staffing issues, as well as strategic matters relating to the work of Hansard) in the Hansard area for a significant period of time. Broad (and inappropriate) reference was made to her management of those issues in the harassing note and it was reasonable to suspect that the leaver of the note may have known, or ought to have known, that the note was bound to upset Ms A and make her feel harassed. Ms A's distress was significant enough for the Secretary to advise Ms A to take the matter directly to HR for assistance.

44. Ms A, and subsequently the relevant DPS decision-makers, took the view that the note was intended to cause hurt and distress, which would plainly be contrary to the Parliamentary Service Code of Conduct if proven (see section 13(3) of the *Parliamentary Service Act 1999*). As such, DPS submits that the real reason for the commencement of disciplinary proceedings was lawful and proper, and entirely unrelated to Employee X's dealings with any member of parliament, of which DPS was unaware at that time.

Consistency of approach

45. DPS submits that, having accepted that Ms A felt harassed and upset by the contents of the note, its actions in commencing a course of action with the potential to lead to formal disciplinary proceedings was entirely consistent with the Department's ordinary approach to harassment in the workplace. It is not something that can be interpreted as a matter that was 'over-inflated' in order to serve some ulterior and unlawful objective, such as disciplining Employee X over her interactions with a senator.

46. Since her appointment as Secretary in May 2012, Ms Mills has spoken publicly (both within the department and more broadly) about a zero-tolerance approach to bullying and harassment. The department has continuously aimed to improve its approach to dealing with such complaints, including:

    a. promoting the Secretary's open-door policy, in order for employees (as well as unions) to discuss matters of concern to them;

b. implementing new and robust mechanisms through which employees may confidently report concerns about bullying and harassment, such as through a Harassment Contact Officer network, or via supervisors, managers or Authorised Officers in accordance with the *Public Interest Disclosure Act 2013;*
c. providing training and information to all staff about their obligations in respect of workplace conduct, as well as information about mechanisms available to them to address any concerns about bullying or harassment;
d. maintaining a register of complaints of bullying and harassment, including information about action taken in response to complaints;
e. introduction of a new role within HR Services of 'Assistant Director, Conduct and Performance', which is specifically responsible for managing conduct matters including bullying and harassment complaints; and
f. reporting to the DPS Executive Committee on a regular basis information about numbers of complaints made, action taken, and matters resolved.

47. For information about DPS' handling of bullying and harassment complaints, please refer to **Attachment D.** This attachment outlines numbers of matters reported to the department, and specifies numbers of matters that were able to be resolved by management intervention and matters that required investigation. The Committee will note that the DPS has, where needed, investigated complaints of bullying and harassment, consistent with the course of action taken in the case of Employee X.

48. It is relevant to note that DPS has taken a strong approach to bullying and harassment for a range of reasons, including:

a) the Department's potential liability for injury caused by bullying and harassment, under both the *Work Health and Safety Act 2011* and *Safety, Rehabilitation and Compensation Act 1988;*
b) the Department's potential liability for bullying under the *Fair Work Act 2009* (noting that the anti-bullying jurisdiction of the Fair Work Commission had been introduced a matter of weeks prior to Ms A's complaint); and
c) to address concerns raised in the 2012 inquiry of the Senate Finance and Public Administration Committee into the performance of DPS, about bullying and harassment of staff in DPS.

49. On this basis, DPS submits that there was a proper and lawful purpose for commencing disciplinary proceedings. Faced with a similar situation of a staff member leaving an inappropriate and distressing note for another employee, DPS would take the same course of action in considering preliminary, and if justified, formal disciplinary investigations.

Reference to Senator Faulkner's office in investigation

50. For completeness, DPS notes that, in her advice to Senator Faulkner on this matter, the Clerk of the Senate has suggested that because the Code of Conduct process ultimately referred to Employee X's provision of information to Senator Faulkner (in order to respond to Employee X's statement), it necessarily follows that the disciplinary action was taken *because of or in connection with* the provision of information to Senator Faulkner.

51. DPS disputes this conclusion in the strongest terms, and says that this is simply not supported by the facts of the matter, particularly the timeline. The clear evidence is that the decision-makers commenced the course of action only because of a suspicion that Employee X left a harassing note for Ms A.

52. It is clear from the face of the draft Code of Conduct report (at Attachment X to DPS' submission) that Employee X's supposed provision of information to Senator Faulkner was not, in any way, a relevant or determining factor in the Code of Conduct investigation. Rather it was referenced in this limited way:
    a. the investigator informed Employee X that CCTV footage placed her in the vicinity of Ms A's office;
    b. the investigator recited Employee X's statement that she had been on the premises because she had 'personal business' with a senator; and
    c. the investigator acknowledged the CCTV footage supported that statement but found that the statement did not explain her presence in the vicinity of Ms A's office.

53. The matter was only addressed at all because it was specifically raised by Employee X. It is therefore difficult to see how an adverse inference, particularly a finding that disciplinary action was taken against Employee X because of her approach to Senator Faulkner, could be drawn from this scenario.

Part B – Improper interference with the free performance of a senator's duties

54. DPS will outline in this section its submissions to the effect that there has been no actual or attempted improper interference with the free performance by Senator Faulkner of his duties as a senator, either by way of:

    a. disciplining an employee over the provision of information to Senator Faulkner; or
    b. use of the CCTV system to conduct unauthorised surveillance, either of Senator Faulkner, his office, or persons who may attend his office to provide information.

55. Further, DPS submits that there was no intent on the part of relevant employees to interfere with Senator Faulkner's performance of his duties.

Investigation of employee's conduct

56. As outlined in Part A, DPS accepts that sanctioning an employee over their provision of information to a parliamentarian, for parliamentary purposes, could constitute an improper interference with the free performance of a senator's duties, insofar as that action might tend to discourage persons from providing information to a senator for parliamentary purposes.

57. However, as outlined in Part A above, DPS disputes, in the strongest terms, that disciplinary action was taken against Employee X because of any dealings with Senator Faulkner. There is simply no connection between the investigation and Employee X's dealings with the Senator.

58. Indeed, there was nothing before DPS at the time the relevant decisions were made and actions taken, that suggested that Employee X was interacting with Senator Faulkner on matters relating or incidental to the parliamentary process. At its highest, she indicated that she had 'personal business' with the Senator. Prior to Senator Faulkner's indication at Senate Estimates on 26 May 2014 (which was clearly past the time that relevant decisions were made) that he considered Employee X to be a whistleblower, there was no indication that the purpose of her visit may have related to parliamentary proceedings.

Unauthorised surveillance

59. Much has been made, both in the Clerk's advice to Senator Faulkner and subsequently in media reporting of this matter, of the allegation that DPS officers used the Parliament House CCTV system to 'conduct unauthorised surveillance of Senator Faulkner's office'. This allegation appears to be based on the assumption, which DPS says is flawed, that DPS' use of CCTV footage as evidence in disciplinary proceedings was not, and could not be, authorised by the CCTV Code of Practice, and a further assumption that any use of CCTV footage must therefore have been for unauthorised (unlawful) surveillance purposes.

60. DPS accepts that use of the CCTV system in Parliament House to undertake unauthorised surveillance of a parliamentarian's office could be contrary to parliamentary privilege, especially in cases where the product of that unauthorised surveillance is used to intimidate persons who provide information to parliamentarians. However, once again DPS submits that this is simply not made out on the facts.

61. Speaking generally, the concept of surveillance necessarily entails a deliberate training of attention on a particular subject. There are over 480 CCTV cameras in operation in Parliament House. Security staff responsible for the real-time monitoring of the CCTV system constantly shift focus to respond to operational priorities, incidents and events in the precincts. There is no security personnel dedicated to surveilling Senator Faulkner or his suite, or that of any member of parliament (with the exception of AFP-CPP officers dedicated to the Prime Minister).

62. In the case of Employee X, the employees involved in the approval processes for the release of CCTV footage for investigative purposes took the view that the CCTV Code of Practice authorised the use of footage for internal investigative processes. AGS' expert analysis of the facts of this case and the terms of the CCTV Code of Practice clearly indicates that it was open to the authorised officers to take this view. DPS submits there are a number of grounds outlined in paragraph 5 of the Code of Practice that give a basis for properly authorising the release of CCTV footage for use in disciplinary proceedings (see AGS advice at paragraphs 63-69).

63. Where the one-off use of CCTV footage, referable to a particular incident not known to be connected to parliamentary business, has been duly authorised under the CCTV Code of Practice for proper and legitimate reasons, and that Code of Practice has in turn been authorised by the Presiding Officers in accordance with their powers of control and management of the Parliamentary Precincts, it is difficult to see how that use could nonetheless constitute unauthorised or improper surveillance, contrary to parliamentary privilege.

64. Further, DPS does not accept that, because the CCTV footage relating to the leaving of the note for Ms A incidentally included footage of Employee X's apparent dealings with Senator Faulkner, it necessarily follows that the use of that footage constitutes unauthorised surveillance of Senator Faulkner's office, much less that the use constitutes an interference with the free performance of duties by Senator Faulkner as a senator.

65. As noted throughout this submission, DPS reiterates that any footage of Employee X's dealings with Senator Faulkner's office was truly incidental to the issue in hand. But for the fact that the dealings with Senator Faulkner were specifically raised by Employee X, albeit in vague terms without reference to parliamentary processes, DPS would not have had reason to consider this aspect of the footage at all. It is difficult to see how this scenario could constitute unauthorised surveillance of a parliamentarian or their office, rather than an isolated instance of inspection that was incidental to a proper and authorised use of related footage.

66. Further, to DPS' knowledge there is no evidence that any of the events now under consideration by the Committee have in any way hampered or obstructed Senator Faulkner, insofar as his ability to collect information from 'whistleblowers' or others has allegedly been hampered because of fears of CCTV surveillance. If nothing else, the fact that Employee X apparently returned to Senator Faulkner with concerns about the investigation would appear to demonstrate that she, in particular, was not in fact deterred from providing information to Senator Faulkner because of the fact of an investigation being instituted against her, relying in part on CCTV evidence.

Intention of DPS employees

67. DPS submits, on behalf of the employees involved in the relevant approval and investigative processes, that there was no intent on the part of any employee to undertake surveillance of a senator's office, to undertake surveillance of an employee in respect of their dealings with a senator's office, or to interfere in any other way in the business of any senator.

68. Rather, the employees involved were tasked with, and attended to, duties relating to the process of establishing whether or not Employee X had left a harassing note for Ms A. They sought to do so within the terms of DPS' ordinary processes and policies, and did so for proper and lawful purposes.

Part C – Contempt

69. Having demonstrated in Parts A and B above that:
    a. there can be no suggestion that disciplinary action was taken against Employee X in connection with her provision of information to Senator Faulkner; and
    b. there has been no improper interference, whether actual or attempted, with the free performance by Senator Faulkner of his duties as a senator;

    DPS submits that the Committee ought to find that there is no case to answer in respect of contempt of parliament, for any DPS employee or officer.

70. However, for completeness, DPS wishes to address the aspect of the Clerk's advice that goes to 'culpable intent'. In particular, the Clerk suggests that if the actions of a parliamentary service employee are found to infringe parliamentary privilege, and those actions are done in 'reckless ignorance or indifference' to the issue of parliamentary privilege, that the Committee could find this to be a sufficient indicator of culpable intent for the purposes of establishing contempt.

71. It is difficult to see that a finding of 'reckless ignorance or indifference' could be made in the circumstances of this case, much less a finding of contempt. With respect, DPS assumes that the Clerk's advice was prepared without a full knowledge of the facts and the timeline of events in this case, and that this has influenced the tenor of her early advice. The more detailed facts establish:
    a. at no stage prior to Senator Faulkner's statement on 26 May 2014 was it apparent that the footage contained any transacting of parliamentary business
    b. DPS deliberately directed attention away from the footage of the visit to the senator's suite – as directed by Ms Mills, it is not something that DPS monitors
    c. the footage of the visit to the senator's suite was not part of the original briefing either to the Secretary (supporting the decision to commence a Code process) or to the investigator, and was only adverted to when the fact of the visit to the Senator's suite on 'personal business' was raised by Employee X

d. even then the investigator had no regard to that footage, and dealt with it in the draft report only for the purpose of putting it to one side in a transparent fashion
e. at all times dealings with the CCTV footage were duly authorised under the Code of Practice.

72. In all of those circumstances the Committee should be satisfied that there was never any intent to infringe parliamentary privilege, whether culpable or otherwise. As noted in the Clerk's advice, the Privileges Committee has "on occasion, expressed reluctance to make findings of contempt in the absence of culpable intention", and DPS submits that the Committee should be similarly reluctant to make such a finding in this case, in the absence of any intent to infringe parliamentary privilege.

Additional commentary and closing remarks

73. In conclusion, DPS is confident in submitting to the Committee that there has been no infringement of parliamentary privilege in this matter, nor is there any issue of contempt of parliament on the part of DPS' employees.

74. That said, regardless that it considers there was no infringement of parliamentary privilege in this matter, DPS has taken a number of steps since this matter was raised in May 2014, to give further confidence to members and senators as to the administration of the CCTV system. This includes the revision of delegations, particularly delegations to approve the commencement of Code of Conduct action and to appoint investigators, to ensure high-level oversight of those matters so that any issue of parliamentary privilege can be identified early in the process, and to further ensure that relevant persons, particularly investigators, are well-versed in parliamentary privilege where necessary.

75. If it would assist the Committee in better understanding the matter at hand, DPS notes that employees involved in this matter would be available to appear before the Committee. In particular, Ms Mills, Secretary, DPS, would be happy to attend to give evidence and discuss further with the Committee the actions taken in this case. That said, given the significance of these matters for the employees involved, DPS would propose that any employee attending to give evidence to the Committee be accompanied by counsel.

Submitted on behalf of the
Department of Parliamentary Services

26 September 2014

the leading lawyers to government

Our ref. 14094498

18 September 2014

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Ms Lisa Kearney
Director, Legal Services
Department of Parliamentary Services

BY EMAIL

Dear Ms Kearney

Use of CCTV in Parliament House – questions of privilege and contempt

INTRODUCTION

1. In the context of an inquiry by the Privileges Committee of the Senate, you have asked us to advise on the likely position a court would take to questions of parliamentary privilege and contempt arising out of the use of closed circuit television (CCTV) footage in a particular instance within the parliamentary precincts.[1]

2. Our short advice is that if questions of parliamentary privilege and/or contempt were to come before a court, it is most unlikely the court would find that the circumstances under consideration give rise to any breach of parliamentary privilege or contempt.

BACKGROUND FACTS

3. In view of the importance and sensitivity of the issues raised for our advice, we shall now canvass the background facts in some detail.

4. On 19 February 2014, a Parliamentary Service employee (Ms A) in the Department of Parliamentary Services (DPS) approached the Secretary of DPS, having received an anonymous, typewritten note in her 'in-tray' the previous evening (or, possibly, that morning, prior to Ms A's attendance at work). Ms A worked in the Hansard area of Parliament House.

5. The anonymous note seemed to be written by another Parliamentary Service employee. The terms of the anonymous note could hardly be described as constructive. Rather, its tenor and text were belittling and accusatory, and the author is likely to have recognised/intended that it may cause hurt and distress to Ms A (which, we are instructed, it did).

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1 In the event a person was imprisoned by the Senate for an offence against it, a court would be able to examine the relevant warrant (containing the information required by s 9 of the *Parliamentary Privileges Act 1987*) to determine whether the requirements for an offence (set out in s 4 of that Act) were made out. See also Chapter 2 of *Odgers' Australian Senate Practice*.

6. Ms A raised receipt of the anonymous note with the Secretary of DPS, who suggested that Ms A approach HR Services about the note, as a potential behavioural issue on the part of the person who had left the note. Ms A advised HR that she was concerned that the anonymous note had been left by Employee X, based on a range of longstanding issues between them and various expressions contained in the note. Employee X used to work with Ms A, but at the time was working in the HR area of the Senate in Parliament House.

7. On 20 February 2014, HR Services employees approached the Security Branch within DPS with a view to identifying persons (connected to Ms A) who may have attended Parliament House after hours on the evening of 18 February. A check of the 'swipe access' records identified Employee X as having entered Parliament House at 9.31 pm that evening. No other 'candidates' emerged apart from Employee X.

8. HR then approached the Assistant Director, Security Support, for approval to view CCTV footage to confirm Employee X's entry into, exit from, and movements within, Parliament House on the evening of 18 February 2014. This approval was sought because access to, and use of, CCTV footage within the parliamentary precincts was controlled, at the time, by a policy document entitled *Operating Policies and Procedures No 10.18 – CCTV Code of Practice* (the Code), which was endorsed by the Presiding Officers of the day (being the President of the Senate and the Speaker of the House of Representatives) pursuant to authority reposed in them by the *Parliamentary Precincts Act 1988*.[2] The Assistant Director, Security Support, approved HR's request for access to the CCTV footage for the purpose of confirming Employee X's entry into, exit from, and movements within, Parliament House on the evening of 18 February 2014.

9. A review of relevant CCTV footage established Employee X's attendance at Parliament House that evening (carrying various papers), including entry and exit via the Senate entry, and attendance near the Hansard area where Ms A worked (a number of camera views showed Employee X proceeding to the area outside the entrance to Hansard, then leaving the vicinity of Hansard). The footage inspected showed that Employee X did not enter the area where she was then working. The footage also showed that when Employee X exited the building she was no longer carrying any papers.[3]

10. On the basis of this information, on 25 February 2014 the Secretary of DPS was asked by HR Services to approve a preliminary investigation to assess whether Employee X might have a case to answer under the Parliamentary Service Code of Conduct (set out in s 13 of the *Parliamentary Service Act 1999*). The Secretary of DPS acceded to that request.

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2 Section 6 of the *Parliamentary Precincts Act 1988* vests the control and management of the precincts of the Parliament in the Presiding Officers, and authorises them (subject to any order of either House) to take any action they consider necessary for the purpose of exercising such control and management.

3 At this stage the identified CCTV footage did not capture Employee X's entire route – ie she was 'lost' for a time. See para 14 below.

11. On 26 February HR asked Employee X, via a letter, to explain her attendance at Parliament House on the evening of 18 February 2014. The letter sent to Employee X set out all of the (then known) material facts concerning the preliminary investigation, and sought an explanation from Employee X of her 'precise movements whilst in the building'.

12. Employee X advised (on 27 February) that she entered Parliament House on the evening in question in order to return some papers to her workplace. She stated that she had not been able to remember the code to enter her work area 'so I didn't come in [t]here'. Significantly, Employee X did not explain what she had done with the work papers she was allegedly carrying given her inability to enter her workspace, and did not give any account, as requested, of her 'precise movements whilst in the building'.

13. We pause here to note that, in our view, DPS was entitled to regard Employee X's explanation as unsatisfactory, and potentially dishonest. This is because the CCTV footage showed three matters of significance which were not adequately explained by Employee X. First, Employee X at no stage even entered the corridor leading to the area. The closest she got to her work area was when exiting the lift on the first floor (immediately above the Hansard areas, and around the corner from Senate HR), at which point she turned left (along the first floor link way in the direction of the outer corridor), rather than proceeding toward [4] Secondly, at some stage between Employee X's entry to the building and her walking along the first floor Senate wing corridor, she acquired a brown envelope. An analysis of the apparent route taken by Employee X on the evening of 18 February indicated that 'Hansard [where Ms A worked] would appear to have been the only unlocked work area to which she could have gained entry' in order to acquire the envelope. Yet Employee X asserted that she did not enter that area at all. Thirdly, Employee X offered no explanation whatsoever for entering the building with paperwork and leaving the building without it.

14. Around this same time, a security officer located additional CCTV footage, which recorded other movements of Employee X in Parliament House on the evening of 18 February. That footage showed (for the first time) Employee X approaching a Senator's office and placing an envelope under the door of the Senator's suite. This information was communicated to the Secretary on 27 February, whereupon the Secretary responded (appropriately) that 'contact by individuals with parliamentarians is not something we monitor…'. Accordingly, the footage relating to the visit to the Senator's office was not investigated further and Employee X was not questioned in any way in relation to her attendance at the Senator's office on the evening of 18 February.

15. On 12 March 2014, the Secretary approved a recommendation that a formal Code of Conduct process be instigated against Employee X, solely in connection with the anonymous note that was left in Ms A's in-tray. No reference to Employee X's visit to the Senator's suite was included in the briefing.

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[4] It seems inherently unlikely that Employee X would have gone into work thinking she could remember the code, but then decided (after arriving in the building but well before she got to her work area) that she could not remember the code.

16. A DPS employee was then appointed to investigate and determine whether Employee X had breached the Parliamentary Service Code of Conduct by attending Parliament House after hours, and leaving the anonymous and abusive note in Ms A's in-tray. The investigator was not, at that stage, briefed with any CCTV material relating to Employee X's visit to the Senator's office.

17. On 2 April 2014 the investigator provided details of the formal investigation to Employee X. On 7 April the investigator requested that the Security Branch save all available CCTV footage of Employee X's attendance at Parliament House, and this was approved by Security Branch senior staff with authorisation to undertake this work under the Code. This request was to ensure that the footage was not deleted prior to the completion of the investigation.

18. On 14 April 2014 Employee X provided a response to the allegations, and at this stage noted (for the first time) that there had been *two* reasons for her visit to Parliament House on the evening of 18 February: first, to return documents to her workplace; and secondly, 'I also had *some personal business* with a Senator and left documents at the Senator's office' (emphasis added). Again, we pause here to note that this explanation stops well short of suggesting, let alone establishing, that Employee X's visit to the Senator's office was something 'done in the course of, or for purposes of or incidental to, the transacting of the business of the Senate'.[5]

19. On 29 April 2014 the investigator asked to be provided with all the CCTV footage, and this was approved, pursuant to the Code, by the Assistant Secretary, Building Services. The footage was provided to the investigator (including the visit to the Senator's office).

20. On 13 May 2014 the investigator sent a draft investigation report and CCTV footage to Employee X, requesting a response by 23 May. The draft report recited the investigator's preliminary findings about, inter alia, the route Employee X had walked on the night in question, including her placing an envelope under the door of a Senator's suite. The draft investigation report recited Employee X's statement that she had 'personal business' with the Senator as part of Employee X's explanation for her presence in the building on the night in question. The draft report stated the investigator's preliminary view that this explanation failed to adequately account for Employee X's visit to Parliament House having regard to the balance of her route. The draft report of the investigator did not otherwise engage with Employee X's visit to the Senator's suite. The preliminary findings in the draft report focussed on the leaving of the note in Ms A's in-tray, particularly whether this was done by Employee X and whether this amounted to a breach of the Code of Conduct.

21. Employee X requested, and was granted, a short extension of time (to 26 May) to respond to the draft investigation report.

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5 See s 16 of the Parliamentary Privileges Act 1987. In *O'Chee v Rowley* [2000] 1 Qd R 207 it was unanimously held that the mere fact of receipt of documents/communications by a parliamentarian was not sufficient to confer parliamentary privilege upon them. See also French J in *Crane v Getting* (2000) 87 FCR 9 at [43]-[44]; *R v Chaytor & Ors* [2010] UKSC 52; and *Slipper v Magistrates Court of the ACT* [2014] ACTSC 85 at [48]-[50].

22. On 26 May 2014 the Senate Committee on Finance and Public Administration (sitting in Estimates) raised a question about the use of CCTV footage for Code of Conduct investigations as a possible breach of parliamentary privilege. The issue was referred to the privileges committee for inquiry. Recognising the likelihood that some time would elapse in resolving that issue, and the undesirability of a Code of Conduct process remaining unresolved for a potentially substantial length of time, the Secretary ceased the investigation prior to any finding being made.

23. Employee X has subsequently left the employment of DPS for reasons not connected to the Code of Conduct investigation or the CCTV footage issue.

RELEVANT LEGISLATIVE PROVISIONS

24. Sections 6 and 12 of the *Parliamentary Precincts Act 1998* provide:

> **6 Control and management of precincts**
>
> (1) The precincts are under the control and management of the Presiding Officers.
>
> (2) The Presiding Officers may, subject to any order of either House, take any action they consider necessary for the control and management of the precincts.
>
> (3) In respect of the Ministerial Wing in Parliament House, the powers and functions given to the Presiding Officers by subsections (1) and (2) are subject to any limitations and conditions agreed between the Presiding Officers and the Minister.
>
> **12 Saving of powers, privileges and immunities**
>
> Nothing in this Act shall be taken to derogate from the powers, privileges and immunities of each House, and of the members and committees of each House, under any other law.

25. Sections 9(1) and (2) of the *Parliamentary Service Act 1999* provide:

> **9 Constitution and role of the Australian Parliamentary Service**
>
> (1) The Australian Parliamentary Service consists of Secretaries, the Parliamentary Librarian and Parliamentary Service employees.
>
> (2) The Parliamentary Service serves the Parliament by providing professional support, advice and facilities to each House of the Parliament, to parliamentary committees and to Senators and Members of the House of Representatives, independently of the Executive Government of the Commonwealth.

26. Section 10 of the Parliamentary Service Act sets out the Parliamentary Service Values. It provides:

> **10 Parliamentary Service Values**
>
> **Committed to service**
>
> (1) The Parliamentary Service is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Parliament.
>
> **Ethical**
>
> (2) The Parliamentary Service demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

Respectful

(3) The Parliamentary Service respects the Parliament and all people, including their rights and their heritage.

Accountable

(4) The Parliamentary Service performs its functions with probity and is openly accountable for its actions to the Parliament and the Australian community.

Impartial

(5) The Parliamentary Service is non-partisan and provides advice that is frank, honest, timely and based on the best available evidence.

27. Section 13 of the Parliamentary Service Act sets out the Parliamentary Service Code of Conduct. It provides, relevantly:

13 The Parliamentary Service Code of Conduct

(1) A Parliamentary Service employee must behave honestly and with integrity in connection with Parliamentary Service employment.

(3) A Parliamentary Service employee, when acting in connection with Parliamentary Service employment, must treat everyone with respect and courtesy, and without harassment.

(8) A Parliamentary Service employee must use the resources of the Commonwealth in a proper manner and for a proper purpose.

(9) A Parliamentary Service employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's Parliamentary Service employment.

(11) A Parliamentary Service employee must at all times behave in a way that upholds:

(a) the Parliamentary Service Values and Parliamentary Service Employment Principles; and

(b) the integrity and good reputation of the Department in which he or she is employed and the Parliamentary Service.

28. Section 49 of the Constitution provides:

Privileges etc. of Houses

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

29. Section 4 of the *Parliamentary Privileges Act 1987* provides:

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference

with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

30. Section 3(3) of the Parliamentary Privileges Act provides:

> In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

31. Section 5 of the Parliamentary Privileges Act provides:

> **5 Powers, privileges and immunities**
>
> Except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House, as in force under section 49 of the Constitution immediately before the commencement of this Act, continue in force.

32. Subsections 16(1), (2) and (3) of the Parliamentary Privileges Act provide:

> **16 Parliamentary privilege in court proceedings**
>
> (1) For the avoidance of doubt, it is hereby declared and enacted that the provisions of article 9 of the Bill of Rights, 1688 apply in relation to the Parliament of the Commonwealth and, as so applying, are to be taken to have, in addition to any other operation, the effect of the subsequent provisions of this section.
>
> (2) For the purposes of the provisions of article 9 of the Bill of Rights, 1688 as applying in relation to the Parliament, and for the purposes of this section, ***proceedings in Parliament*** means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:
>
> (a) the giving of evidence before a House or a committee, and evidence so given;
>
> (b) the presentation or submission of a document to a House or a committee;
>
> (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
>
> (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.
>
> (3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
>
> (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
>
> (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
>
> (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

33. The expression 'court' as it appears in s 16 is defined to mean a federal court or a court of a State or Territory. The expression 'tribunal' as it appears in s 16 is defined to mean

'any person or body (other than a House, a committee or a court) having power to examine witnesses on oath, including a Royal Commission or other commission of inquiry of the Commonwealth or of a State or Territory having that power'.

34. Finally, Article 9 of the Bill of Rights provides:

> ..the freedom of speech and debates or proceedings in Parliament ought not be impeached or questioned in any court or place out of Parliament.

RELEVANT PROVISIONS OF THE CODE

35. Clause 4 of the Code provides that it is based on 11 key principles described at Attachment A thereto. Sub-clause (k) in Attachment A states:

> The retention of, and access to, images and recorded material will be only for the purposes provided by this Code of Practice.

36. Clause 5 of the Code relevantly provides:

> Subject to this Code of Practice, the CCTV system is only to be used for the following purposes.
>
> (a) Assist in the control and management of the Parliamentary precincts...
>
> .....
>
> (j) For any other purpose approved in writing by the Presiding Officers.

37. Clause 40 of the Code provides:

> Access to and release of images is only to occur as defined in this OPP and the authorisations matrix at Attachment F.

38. Attachment F is entitled 'Authorisations'. It expressly authorises persons occupying designated positions in DPS to approve another DPS employee viewing CCTV images 'where the viewing of images occurs as part of their duties and serves an identified purpose'. The reference to 'identified purpose' appears to be a reference to the purpose identified in clause 5. Two of the designated persons who may approve access are the Assistant Director, Security Support and the Assistant Secretary, Building Services.

SUMMARY OF ADVICE

39. In our view it is extremely unlikely that a court would find a breach of parliamentary privilege, or a contempt of the Parliament, or an offence against a House, arising out of the facts set out above. We say this for the following reasons:

39.1. The use of CCTV footage was, as a matter of fact, duly authorised by relevant decision-makers under the Code. The Code was endorsed by the Presiding Officers pursuant to authority vested in them by s 6 of the Parliamentary Precincts Act to control and manage the precincts of the Parliament.

39.2. Although s 12 of the Parliamentary Precincts Act provides that nothing in that Act 'shall be taken to derogate from the powers, privileges and immunities of each House ....under any other law', that does not mean that the Presiding

Officers' endorsement of the Code, and its observance in the subject circumstances, are matters which are irrelevant to the existence or otherwise of a breach of parliamentary privilege and/or contempt. Whether a breach of parliamentary privilege occurs, or a contempt is committed, must necessarily be informed by a consideration of relevant factual matters. Here, given that (i) use of the CCTV footage occurred in accordance with the procedures and principles set out in the Code; and (ii) those procedures and principles were endorsed by the Presiding Officers pursuant to legislation enacted by the Parliament, in our view a court will be very reluctant to find a breach of the privileges of the Parliament, or a contempt.

39.3. In any event, quite apart from the Code, it is very difficult to see how use of the CCTV footage which occurred here could be regarded as giving rise to a breach of parliamentary privilege or contempt.

39.4. So far as parliamentary privilege is concerned, the investigators who accessed the CCTV footage did not come within the definition of 'tribunal' for the purposes of s 16 of the Parliamentary Privileges Act. Accordingly, s 16(3) simply did not apply to them. Further, even when the expansive definition of 'proceedings in Parliament' in s 16(2) is applied to Article 9 of the Bill Of Rights, a court is very unlikely to find that the investigators' use of the CCTV footage involved any impeachment or questioning of the freedom of speech and debates or proceedings in Parliament. The CCTV footage was accessed solely for the purpose of ascertaining whether Employee X had breached the Parliamentary Service Code of Conduct by leaving an anonymous note in the in-tray of Ms A. No aspect of the disciplinary action taken against Employee X was based upon, or involved adjudication of the appropriateness of, her dealings with any parliamentarian.

39.5. So far as contempt is concerned, the facts recounted above do not appear to be capable of supporting a finding that there has been any interference with the transaction of the business of the Parliament, or with any parliamentary member. Further, having regard to the Senate's own resolution concerning the circumstances in which a contempt might be found, a number of factors militate strongly against the availability of such a finding.

REASONS IN DETAIL

Parliamentary privilege and contempt – foundational concepts

40. Under s 49 of the Constitution, the powers, privileges and immunities of the Houses of Parliament can be declared by the Parliament (including by, but not limited to, an Act of the Parliament). To the extent that they are not so declared, they are the powers, privileges and immunities of the House of Commons at the establishment of the Commonwealth in 1901.

Parliamentary Privileges Act 1987

41. The Parliamentary Privileges Act was enacted in reliance on s 49 of the Constitution. While that Act specifically deals with (and in some cases modifies) some aspects of the

privileges of the Houses of Parliament, s 5 of the Act provides that 'except to the extent that this Act expressly provides otherwise, the powers, privileges and immunities of each House, and of the members and the committees of each House as in force under s 49 of the Constitution immediately before the commencement of this Act, continue in force'.

42. The *powers* of the Houses of Parliament, as distinct from the privileges and immunities of the Houses of Parliament, relevantly include the power to punish *contempt* of Parliament. According to May's *Parliamentary Practice* (24th ed), either House of Parliament may treat as contempt:

> ... any act or omission which obstructs or impedes [it] in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results ... even though there is no precedent of the offence.

43. Although this statement specifically concerns the Houses of the UK Parliament, it continues to be applicable to the Houses of the Commonwealth Parliament in accordance with s 49 of the Constitution and s 5 of the Parliamentary Privileges Act.

44. In Australia the power to punish contempt of Parliament is subject to s 4 of the Parliamentary Privileges Act, which is set out above.

45. Section 4 of the Parliamentary Privileges Act is to be read in light of the interpretive provision contained in s 3(3):

> In this Act, a reference to an offence against a House is a reference to a breach of the privileges or immunities, or a contempt, of a House or of the members or committees.

46. *Odgers*[6] describes s 4 of the Parliamentary Privileges Act as:

> ..... a statutory definition of contempt of Parliament...Enactment of this provision means that it is no longer open to a House, as it was under the previous law, to treat any act as a contempt.

47. Under s 7 of the Parliamentary Privileges Act, a House may impose penalties for offences against that House determined by it to have been committed by a person. A House may impose a fine or a term of imprisonment. This is done by a resolution of the House.

Privileges resolutions

48. The Senate has published orders relating to matters of parliamentary privilege in the nature of resolutions agreed to by the Senate on 25 February 1988.

49. Resolution 3 sets out criteria to be taken into account when determining matters relating to contempt. It states:

> The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of

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6 *Odgers' Australian Senate Practice* 13th edition, chapter 2.

Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:

(a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;

(b) the existence of any remedy other than that power for any act which may be held to be a contempt; and

(c) whether a person who committed any act which may be held to be a contempt:

(i) knowingly committed that act, or

(ii) had any reasonable excuse for the commission of that act.

50. Resolution 6 declares matters which may be treated by the Senate as contempts. Those parts of resolution 6 which may be relevant are set out below:

Without derogating from its power to determine that particular acts constitute contempts, the Senate declares, as a matter of general guidance, that breaches of the following prohibitions, and attempts or conspiracies to do the prohibited acts, may be treated by the Senate as contempts.

Interference with the Senate

(1) A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a senator of the senator's duties as a senator.

Improper influence of senators

(2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

...

Molestation of senators

(4) A person shall not inflict any punishment, penalty or injury upon, or deprive of any benefit, a senator on account of the senator's conduct as a senator.

...

Interference with witnesses

(10) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

Molestation of witnesses

(11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

CCTV facilities at Parliament House

51. We are instructed that CCTV cameras have been operational in the public parts of Parliament House since it opened in 1988. CCTV cameras were installed in the House of Representatives and Senate Wings of Parliament House in 2003, following approval from the Presiding Officers. The Presiding Officers first authorised a code of practice for the use of the CCTV system in 2003.[7]

52. The CCTV system consists of colour CCTV cameras, monitors, control panels and a digital video recording system. Cameras are installed at various points throughout Parliament House and external cameras operate throughout the parliamentary precincts. Some cameras are fixed, but most are capable of being panned, tilted and zoomed by operators to enable effective monitoring. The CCTV cameras only display and record images; they are not capable of playing or recording sound.

53. Monitors are installed in a number of locations. The majority of monitors are at security points around the building, and have access to footage (with no playback capacity) from a restricted number of cameras necessary to perform security functions at those points.

54. All cameras are continuously operating and are capable of live-time monitoring. However, the ability to record images depends on the location of the cameras and the time of day recording is sought.[8] Recorded images are generally saved for at least 8 weeks before being overwritten. Recorded footage can also be saved, which allows images of particular incidents to be put aside for further review and download if necessary. Access to recorded images is subject to authorisation. Only Security Systems Administrators can make a copy of recorded CCTV footage.

Is CCTV fundamentally inconsistent with parliamentary privilege?

55. In 1978 a privileges committee of the Senate considered a range of security measures in the aftermath of the Hilton Hotel bombing. The committee on that occasion:

- accepted that security measures to protect members and senators, and others going about their business in the parliamentary precincts, were both necessary and desirable
- accepted that security measures, including security personnel on entrances to the building, security screening on entrances to the building, locking down parts of the building regularly and the wearing of security tags that identify members and senators, would not infringe upon the privileges of Parliament.[9]

56. While the committee on that occasion was not concerned with CCTV cameras, its findings recognise that some inconveniences to senators incidental to appropriate security measures will not of themselves amount to a breach of parliamentary privilege.

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7 This was the first version of the Code discussed in this advice. The history of CCTV systems in Parliament House is detailed in a submission to the Privileges Committee provided by DPS on 8 July 2014.

8 Further detail is contained in the DPS submission of 8 July 2014.

9 Parliamentary Paper 22/1978, read with Senate Hansard 16 August 1978 at 106.

57. In our view it is clear that the mere existence of CCTV systems does not, of itself, infringe upon the privileges of Parliament. As we discuss in detail below, the real question is whether a use of footage in a particular instance infringes or gives rise to a contempt.[10]

58. The existence of a CCTV system in the parliamentary precincts is actually facilitative of the transaction of parliamentary business. For example:

- where an unauthorised person enters a restricted area in the parliamentary precincts, it can be used to locate them and prevent them from interrupting parliamentary proceedings
- where a member or senator identifies that important documents or other items have been lost or stolen, it can assist in recovering them
- where a member or senator is assaulted or harassed it can be used to provide evidence that secures a conviction, giving members and senators confidence that they can go about their business in the precincts without fearing for their personal safety.

59. These factors informed the original decision to install CCTV cameras within Parliament House.[11]

60. What is critical in our view is the use to which the CCTV footage is put. Just as a hallway can be used to interfere with a senator, for example by engaging in disruptive behaviour outside their suite or by harassing persons who visit a senator, so too CCTV footage carries the potential to be used in ways which might interfere with the transacting of parliamentary business. For instance, if CCTV footage were to be used to identify persons transacting business so as to harass or sanction them for so doing, such use would likely infringe parliamentary privilege and/or constitute a contempt. Similarly, if CCTV footage were to be used in a manner which was deliberately contrary to the principles and procedures outlined in the Code, this could amount to a contempt (by virtue of being an improper interference with the authority or functions of the Presiding Officers). However, those examples are a far cry from the circumstances presently under consideration.

Relevance of the Code

61. As noted above, access to and use of CCTV footage within the parliamentary precincts is carefully controlled by the Code.[12]

62. In our view the Code can properly be regarded as expressing the circumstances in which the Presiding Officers have authorised dealings with CCTV footage captured in

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10 As an aside, we note also that not every activity which is undertaken in the precincts can properly be regarded as 'proceedings in Parliament'. See *O'Chee v Rowley* [2000] 1 Qd R 207; *Crane v Getting* (2000) 97 FCR 9 at [43]-[44]; *R v Chaytor & Ors* [2010] UKSC 52; and *Slipper v Magistrates Court of the ACT and ors* [2014] ACTSC 85. It follows that not all CCTV footage captured in the precincts gives rise to questions of parliamentary privilege.

11 See further DPS's submission of 8 July 2014.

12 The history of the development of the Code is detailed in DPS's submission of 8 July 2014. We are instructed that the Code is currently under reconsideration by the Presiding Officers.

the precincts. Because of that, in our view a court will be reluctant to characterise a dealing with CCTV footage which is duly authorised under the Code as an interference with parliamentary privilege or a contempt.[13]

63. In our view, a court is very likely to find in this case that (i) it was open to the Assistant Secretary, Building Services, and the Assistant Director, Security Support, to form the view that use of the CCTV was within an identified purpose set out in the Code: namely, to assist in the control and management of the parliamentary precincts (clause 5(a)); and (ii) the decisions made and actions taken by relevant departmental officials did not give rise to any breach of privilege or contempt.

Access to CCTV footage assisted in the control and management of the parliamentary precincts

64. Staff are employed by DPS (and the other parliamentary departments) to provide professional support, advice and facilities to each House, committees, and parliamentarians (see s 9 of the Parliamentary Service Act). Staff are, therefore, an integral part of the operational environment of the parliamentary precincts. They are responsible for a myriad of functions within the precincts and have constant contact with parliamentarians and the transaction of the business of Parliament. It is for these types of reasons that courts recognise that regulation of the conduct of public servants, including conduct engaged in otherwise than for the purpose of fulfilling their employment duties, transcends mere employment-related purposes and preserves and promotes broader public interests.[14]

65. Clearly, DPS staff are expected to behave in ways which are conducive to the fulfilment of various public interests, including the proper control and management of the parliamentary precincts.

66. Therefore, a court is very likely to find that enforcing proper standards of behaviour on the part of DPS staff in relation to accessing Parliament House after work hours is something which assists in the control and management of the parliamentary precincts.

67. In this regard, it is noteworthy that when approval was *first* given to access the CCTV footage, there was a legitimate concern that Employee X had gained entry to Parliament House, after usual work hours, in order to undertake an act on the premises (leaving the anonymous abusive note) which (i) was not within the proper performance of her duties; and (ii) could properly be regarded as antithetical to various provisions of the Parliamentary Service Code of Conduct.[15]

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13 In the circumstances presently under consideration we think a court is likely to find that the terms of the Code could be, and were in fact, administered for a purpose (assisting in the control and management of the precincts) and in a manner which did not give rise to any breach of privilege or contempt. We do not exclude the possibility of a court finding more generally that use of CCTV footage cannot support a finding of contempt if it is undertaken in accordance with the Code. However we expect it would be unnecessary to resolve that question in this case.

14 *McManus v Scott-Charlton* (1996) 70 FCR 16 at 23 per Finn J (cited with approval by Gummow, Hayne, Heydon and Kiefel JJ in *Commissioner of Taxation v Day* [2008] HCA 53 at [34]).

15 See, in particular, ss 13(3), 13(10)(b), 13(11)(a) of the Parliamentary Service Act.

68. On the *second* occasion approval was given, those concerns remained unresolved and, in addition, concerns were also held as to the honesty of Employee X's explanation for accessing Parliament House on the evening in question. Clearly, DPS employees should be completely honest in relation to such matters as (i) their reasons for exercising after-hours access to Parliament House, and (ii) what they do on the premises, and where they go, after obtaining such access.

69. Quite apart from use of the CCTV footage being consistent with clause 5(a) of the Code, it is possible a court would also find that the use was consistent with other provisions, such as:

- clause 5(b): assisting in the day-to-day management of security services. In this regard we note that where a member of DPS staff receives harassing correspondence delivered apparently by hand within the precincts, a legitimate concern arises from the point of view of personal security within the precincts.
- clauses 5(c) and (d): preventing, deterring and detecting crime and identifying offenders. In this regard we note that causing harm to a Commonwealth public official[16] is an offence under s 147.1 of the *Criminal Code Act 1995* (Cth). Obstruction of a Commonwealth official (including intimidating them in the performance of their functions) is an offence under s 149.1 of that Act.
- clause 5(e): providing evidence upon which to take civil proceedings. In this case the proceeding which was, in a sense, on foot was the code of conduct investigation under s 15(3) of the Parliamentary Service Act (and procedures made in accordance with that provision). The Code does not define what is meant by 'civil proceeding'. There is authority which supports the view that a disciplinary process is a 'civil proceeding'.[17] A code of conduct process is an investigative process for determining a breach of the law and imposing an appropriate penalty (which may include, for example, termination of employment or a fine) in accordance with a civil standard of proof.

No interference

70. If, contrary to our view, a court were to find that the Code did not technically authorise the use of CCTV footage in this case, it does not follow that an offence against a House (including breach of parliamentary privilege or a contempt) was committed. As is plain from s 4 of the Parliamentary Privileges Act and Senate Resolution 6, an intention to interfere, or likely interference, with a member or the Parliament is a necessary ingredient in any offence.

71. In this case the available evidence suggests there was no intention to interfere, and no likely interference, with the Parliament or any parliamentarian. The code of conduct investigation to which the accessing of the CCTV footage was not based upon Employee X having transacted any parliamentary business. The Secretary of DPS had

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16 An employee of DPS is a 'Commonwealth public official' as defined in the Dictionary to the *Criminal Code Act 1995*.

17 *Hartmann v Commissioner of Police* (1997) 91 A Crim R 141 at 148.

directed that no action should be taken in respect of the footage of the visit to the Senator's office, and no further enquiries were made in connection with it.

72. There does not appear to have been an intention on the part of any DPS official to impeach or question any proceedings in Parliament.

Resolution 3 considerations

73. Resolution 3[18] provides:

> The Senate declares that it will take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Committee of Privileges and whether a contempt has been committed, and requires the Committee of Privileges to take these criteria into account when inquiring into any matter referred to it:
>
> (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
>
> (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
>
> (c) whether a person who committed any act which may be held to be a contempt:
>
> (i) knowingly committed that act, or
>
> (ii) had any reasonable excuse for the commission of that act.

74. In this case, a number of observations may be made about the matters set out in resolution 3.

Substantial obstruction

75. For the reasons discussed above, in our view there is no evidence to support a conclusion that there has been any obstruction, let alone substantial obstruction, of a Senator in the performance of his/her functions.

Existence of other remedies

76. If the Privileges Committee considers that CCTV footage should not be used in order to deal with suspected cases of misconduct committed within the precincts (or such use should be subject to particular conditions or qualifications), there is much to be said in favour of the Code being amended to clearly reflect that position.

Knowing commission and reasonable excuse

77. On the facts of this case, it seems clear that the DPS officers who were involved in the use of the footage were unaware they were witnessing the transacting of any parliamentary business. Nothing Employee X had told them suggested this was the case – quite the opposite. Once the spectre of engagement with a Senator emerged, DPS advertently shut down any inquiry into the circumstances of the visit to the

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[18] Senate Standing Orders, Parliamentary Privilege Resolution 3.

Senator's office – a step apt to avoid any interference with parliamentary matters. As noted above, the fact of the visit to the Senator's office formed no part of the disciplinary action taken against Employee X. The visit was only referred to in the draft investigation report because:

77.1. Employee X raised, as part of her explanation for being present in Parliament House on the night in question, her 'personal business' with a Senator

77.2. the investigator, accepting the evidence that Employee X had visited a Senator's office on the night in question, stated that this could not account for the totality of Employee X's movements in other parts of Parliament House. In effect, it was dealt with only as far as was necessary to put it to one side.

RESULT

78. For the above reasons, if a court were called on to consider whether an offence against a House had been committed in this case, there is a very strong likelihood that its conclusion would be: no.

79. This advice has been settled by Tom Howe QC, Chief Counsel Dispute Resolution. Guy Aitken, Chief General Counsel, has also read and agrees with the advice. The Attorney-General's Department was also consulted in the preparation of this advice.

Yours sincerely

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PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

The Committee's questions are addressed under the headings assigned by the Committee in the letter to DPS dated 2 September 2014.

Allegations of misuse of the CCTV system [in 2011]

The queries under this heading were addressed in a letter to the Committee Chair on 19 September 2014.

The cameras in the Senate wing

- *For how long have the four cameras in the Senate wing (central staircase near Senate entrance) operated on a 24/7 recording basis, with recordings retained for 8 weeks?*

The cameras in question have operated on this basis since the "Universal Video Management System" was installed in 2010.

- *For how long has the home focus setting on these cameras captured a 'full view' of a door to a senator's office?*

These cameras have always had this "home focus" – since the cameras were installed in 2003.

- *When has the home focus on these cameras been reset, previously?*

The home focus on these cameras had not been adjusted or reset at any stage, until August 2014 at the request of the President of the Senate.

Use of CCTV material for internal DPS purposes

- *What is the authority for the use of the CCTV system to investigate disciplinary issues for DPS staff? Provide a copy of any advice relied upon?*

In the Senate Estimates hearing on 26 May 2014, DPS advised the Finance and Public Administration Committee that it had relied on the 'civil proceedings' provision of the Code of Practice to support use of CCTV footage as evidence in a Code of Conduct investigation. AGS has since advised DPS that this position is consistent with case law which indicates that disciplinary proceedings can constitute 'civil proceedings'. Hence DPS says that the use of CCTV footage was permissible within the terms of the CCTV Code of Practice, particularly clause 5(e).

Further, AGS had advised DPS that there are a number of other provisions of the CCTV Code of Practice which would permit use of CCTV footage as evidence in a disciplinary investigation. In particular, that use is permitted by:

- clause 5(a) – use of CCTV to assist in the control and management of the Parliamentary precincts (noting AGS' advice at paragraphs 64 to 68 that maintaining certain standards of conduct and behaviour on the part of parliamentary employees falls within this scope);
- clause 5(b) – use of CCTV to assist in the day-to-day management of security services (where the delivery of a harassing note gives rise to concerns about personal security in the precincts); and

- clauses 5(c) and (d) – use of CCTV to prevent, deter and detect crime, and to identify offenders (where intimidation of a Commonwealth public official is a criminal offence).

Depending on the circumstances to be investigated in an internal disciplinary matter, DPS submits that the CCTV Code of Practice is capable of authorising use of footage as evidence in such investigations, and submits that the Code of Practice was properly applied in the matter currently under consideration by the Committee.

- *How many times have requests been made to access CCTV footage for disciplinary purposes? When was the first request made?*

DPS records show that five requests have been made to access CCTV footage for use in internal disciplinary investigations. The first request was in August 2008[1].

In respect of the August 2008 matter, despite extensive searches, DPS has been unable to find a record of the approval for use in an internal disciplinary matter. However, it is clear from the records (including from a decision of Fair Work Australia) that CCTV was used as evidence in a Code of Conduct investigation. DPS can advise the Committee that the disciplinary proceedings involved, in part, assault of one employee by another, and that the matter was not only subject of internal disciplinary proceedings, but also criminal charges against the offending employee.

The lack of approval in this matter is unusual, as there are otherwise detailed records relating to this matter including records of approval to release the same CCTV footage to the ACT Police, to allow the offending employee to view the footage, and to release the footage to DPS' lawyers and to Fair Work Australia (the final two instances were approved by the Presiding Officers).

- *How many times have requests for footage been granted for this purpose?*

Five requests for access to CCTV footage for internal disciplinary investigations have been approved.[2]

- *How many times have requests for stills been made for disciplinary purposes? When was the first request made?*

DPS records show that two requests have been made for stills, for use in disciplinary investigations.[3]

- *How many times have requests for stills been granted for this purpose?*

Two requests have been granted[4].

- *What records are kept of the authorisation for access?*

Access to records is logged manually. Copies of the relevant logs and associated approvals for the matters noted above are at **Attachment B1.** It should be noted that the logs generally show the dates that access was requested, and the date that access was granted, but not the date that approval was given.

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[1] DPS does not log requests for access that are not then approved.
[2] As per note 1.
[3] As per note 1.
[4] As per note 1.

Matters raised at 2014 estimates

- *Who requested that footage be accessed? When was the request made, and on what basis? Provide a copy of the request.*

On or around 20 February 2014, Mr Henderson (Assistant Director, Conduct and Performance) requested to view relevant CCTV footage. The request was made verbally to Mr Sankey, Assistant Director, Security Support, and was made on the basis that 'swipe data' indicated that Employee X had accessed Parliament House after hours, on the night that the relevant note was left for Ms A. The result of this request was that Mr Henderson was permitted to view the footage, to see if Employee X's route could be identified (the route was partially identified at this early stage).

- *Were any other requests made to access footage from the CCTV system in relation to the same matter? If so, provide details.*

Request	Date	Requester	Purpose
1	25 February 2014	Mr Henderson	Access to footage for purpose of preliminary conduct investigation
2	7 April 2014	Ms Knowler (investigator)	Request to save footage only – to ensure availability in formal investigation
3	29 April 2014	Ms Knowler	Access to footage for formal conduct investigation
4	7 May 2014	Ms Knowler	Additional copy to be provided to employee as evidence

- *Who approved the request to access footage? When was the request approved? Provide a copy of the written report on the outcome of accessing the footage?*

Request	Date approved	Approver
1	26 February 2014	Mr Bryant, Assistant Secretary Security
2	7 April 2014	Ms Harvey, Director Security Capability
3	29 April 2014	Mr Sankey
4	7 May 2014	Mr Bryant

The relevant access logs and approvals are included at **Attachment B1**: DPS assumes these logs address the Committee's request for a 'written report on the outcome of accessing the footage'.

- *Who requested that still images be made from the footage? On what basis was the request made? When was the request made? Provide a copy of the request.*

Request	Date	Requester	Purpose
1	25 February 2014	Mr Henderson	Access to stills for purpose of preliminary conduct investigation

- *Who approved the request to make the still images? When was the request approved? In what form were the images provided and to whom?*

Request	Approver	Date approved
1	Mr Bryant, Assistant Secretary Security	26 February 2014

- *Who subsequently had access to the still images? How were they used? Provide a copy of any internal DPS communication concerning the use of images.*

Recipient	Purpose
Ms Henson, Director HR Services	Attached to brief to Secretary, recommending commencement of Code of Conduct re: Employee X
Ms Sweeney, Assistant Secretary, Corporate Services	Signatory to brief to Secretary
Ms Teece, A/g Chief Operating Officer	Signatory to brief to Secretary
Ms Mills, Secretary DPS	As attachment to brief, recommending commencement of Code of Conduct
Ms Knowler, investigator	As part of the evidence in the Code of Conduct investigation
Employee X	Part of evidence in the Code of Conduct investigation

Note 1: DPS assumes that Employee X also provided stills to her solicitor, when seeking advice about the investigation.

Note 2: DPS assumes that Senator Faulkner and the Clerk of the Senate may have had access to the stills as part of the investigation report.

- *Provide a copy of the draft report of the investigation.*

Copy is at **Attachment B2**

Code of Practice – audit, review and compliance

- *What action has subsequently been taken to initiate a review of compliance with the Code of Practice, as required under section 46 of the Code?*

KPMG has been engaged to conduct an audit of compliance with the Code of Practice.

- *What is the expected timeframe for the review?*

KPMG's draft report is due in October 2014.

- *What action has been taken to initiate a review of the Code of Practice?*

DPS has established a Governance and Policy Team within its Security Branch, which has been tasked with reviewing and developing a Parliament House Protective Security Policy Framework in line with government best practice. The current priority for this team is to gain endorsement for an overall approach and to develop an implementation plan for the outcomes of the pass policy review.

The future work of the team will include a review of the Code of Practice, which will be informed by any outcomes and recommendations of the Privileges Committee. By way of explanation, the priorities of the team have changed over recent months, given the movement of senior staff in the Security Branch (with officers initially assigned to a review of the Code of Practice moved to fill unexpected vacancies), as well as substantial changes to security arrangements at Parliament House more recently. However, DPS has also recently engaged a new Assistant Secretary, Security Branch (who commenced on 17 September 2014), who has been tasked with reviewing the priorities for this team.

- *What is the proposed process for the review?*

Once this task commences, the proposed approach will be put to the Security Management Board for agreement, and any revisions to the Code of Practice as a result of the review will be put to the Presiding Officers for final approval.

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

Information on DPS actions and mechanisms to address bullying and harassment

New legislative schemes

DPS has taken the opportunity through the introduction of the *Public Interest Disclosure Act 2013* (the PID Act) and the insertion of anti-bullying amendments into the *Fair Work Act 2009* to provide additional training to all staff about the requirements and provisions under the Acts, and to review and update internal procedures. Three Senior Executive Service (SES) officers have undergone training and are 'authorised officers' under the PID Act.

DPS, in conjunction with the Commonwealth Ombudsman, has developed a range of information for staff and managers. An intranet page has been established containing DPS procedures for Public Interest Disclosure, FAQs, a process flow chart, and guidance for supervisors and managers in handling a disclosure. In particular, DPS has ensured that its guidance material on the PID Act highlights the protections afforded to disclosers under the Act, as one mechanism for ensuring that staff are confident to report matters of concern.

Monitoring bullying and harassment

DPS continues to use its Human Resources register to record workplace issues, including complaints of bullying and harassment and code of conduct investigations. Separately, DPS also maintains a register of disclosures made and investigations undertaken under the PID Act.

The Human Resources register is used for assessing trends and reporting to the DPS Executive in relation to workplace issues. Data relating to the number and status of code of conduct investigations, as well as Public Interest Disclosure investigations are reported to the Executive Committee meeting and to the Audit and Risk Committee.

Support for staff

There are presently nineteen trained Harassment Contact Officers (HCOs); eighteen are available (one is on long term leave). These staff attended a two day training program in February 2013, and were provided with updated information on the PID Act. Four further staff have registered to become HCOs; they will receive training shortly.

The role of the HCOs is to provide support, guidance and information on processes and options open to individuals to assist with the resolution of complaints. Contact details for the HCOs are published on the DPS intranet and provided to all new starters. HCOs have an important role in helping DPS identify trends or problems in work areas, although to date no significant issues have been identified at this level.

New role

In early February 2014 DPS created a new role within HR Services of 'Assistant Director, Conduct and Performance', the role being specifically tasked with managing processes to address misconduct (including bullying and harassment), as well as performance matters.

AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA ACT 2600
TEL: (02) 6277 3350
FAX: (02) 6277 3199
E-mail: clerk.sen@aph.gov.au

D14/29226

RECEIVED
14 OCT 2014
Committee of Privileges

14 October 2014

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges
The Senate
Parliament House
Canberra ACT 2600

Dear Senator Collins

INQUIRY INTO THE USE OF CCTV MATERIAL AT PARLIAMENT HOUSE

The committee has provided me with a copy of advice prepared by the Australian Government Solicitor at the request of the Department of Parliamentary Services in connection with a submission by DPS to the committee's inquiry into the use of CCTV material at Parliament House. The committee has asked for my assessment of that advice in the context of the powers, privileges and immunities of the Senate.

To summarise, in my view the AGS advice is an attempt to answer a question that will almost certainly never arise in practice. Both the question and the advice misunderstand the respective roles of the Parliament and the courts in matters of privilege. Naturally, and quite understandably, the advice is written to a brief provided by DPS and it therefore reflects the interests of DPS and the position DPS wishes to put to the committee. That position over-emphasises possible justifications for the actions of DPS at the expense of a proper consideration of the powers, privileges and immunities of the Houses and their members. These are primary considerations, and an understanding of them should underpin any policy that is formulated or any administrative action that is taken by any parliamentary department in this place. However, the balancing of these potentially competing interests in this case is a matter for the committee and, ultimately, for the Senate.

The attached assessment begins with an explanation and history of the law relating to judicial review of the Commonwealth Parliament's penal powers. This background is essential to the assessment of the AGS advice that follows because it shows why both the question and advice are misguided. While I take issue with many details of the AGS advice, I have focused only on the main points.

As the committee is aware, I have previously provided advice to Senator Faulkner on the circumstances that gave rise to the committee's inquiry, advice that was tabled at the Budget estimates hearings of the Finance and Public Administration Legislation Committee on 26 May 2014. In that advice, I expressed a view about the propriety of the use of CCTV

footage for a purpose that in my view was not authorised by the CCTV Code of Practice and that was inconsistent with the prevention of improper interference with the free performance by senators of their duties as senators. I had expressed the same view at an estimates hearing two years earlier when the same issue arose. I have since expressed a view about the events that came to light at the 2014 Budget estimates hearing in a communication that was subsequently provided to the press by persons unknown without my knowledge or consent.

These views have influenced my assessment of the AGS advice where it deals with the CCTV Code of Practice. The relevant section of the assessment is under the heading, *The precincts fallacy*.

I am sure the committee is aware of the potential for criticism in these particular circumstances and will approach that potential in accordance with its usual practice of publishing, at an appropriate stage in its inquiry, the evidence and advice on which it may rely.

Please let me know if I can provide the committee with any further assistance.

Yours sincerely

(Rosemary Laing)

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101
14 OCT 2014
Committee of Privileges

ADVICE TO THE COMMITTEE OF PRIVILEGES ON A MATTER RELATING TO ITS INQUIRY INTO THE USE OF CCTV MATERIAL AT PARLIAMENT HOUSE

It is for the courts to judge the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and manner of its exercise. (*R v Richards; Ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 163)

Introduction

In these terms, Dixon CJ summed up the relationship between the courts and Parliament on matters of privilege that had been settled in the United Kingdom since the 1840s and which was the position inherited by the Houses of the Australian Parliament in 1901 through section 49 of the Constitution.

Section 49 provides that:

> The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

The case occasioning Dixon CJ's remarks was the notorious case of Fitzpatrick and Browne, a newspaper proprietor and journalist, respectively, who were jailed in 1955 for contempt of the House of Representatives, having been found to have published articles intended to intimidate and influence the Member for Reid in his conduct in the House and to impute corrupt conduct to the Member for the purpose of discrediting and silencing him. This is the only case in which either of the Commonwealth Houses has imposed a penalty of imprisonment for contempt.

After the House of Representatives had resolved to impose the penalty, Fitzpatrick and Browne were committed to the custody of the local Police Commissioner on the warrant of the Speaker. They challenged the validity of the action of the House by seeking a writ of *habeus corpus*. The High Court unanimously refused the application, holding that the warrant of the Speaker committing the men to custody was conclusive and that the Court could not look behind it.

The Court also rejected an argument, based on the separation of powers in the Constitution, that the parliamentary contempt jurisdiction involved an exercise of judicial power (and was therefore invalid on that basis because only Chapter III courts can exercise judicial power):

> … throughout the course of English history **there has been a tendency to regard those powers as not strictly judicial but as belonging to the legislature, rather as something essential or, at any rate, proper for its protection.** This is not the

> occasion to discuss the historical grounds upon which these powers and privileges attached to the House of Commons. It is sufficient to say that they were regarded by many authorities as proper incidents of the legislative function, notwithstanding the fact that considered more theoretically—perhaps one might even say, scientifically—they belong to the judicial sphere. But our decision is based upon the ground that a general view of the Constitution and the separation of powers is not a sufficient reason for giving to these words, which appear to us to be so clear, a restrictive or secondary meaning which they do not properly bear. ((1955) 92 CLR 157 at 167, emphasis added)

When, in the 1980s, the Joint Select Committee on Parliamentary Privilege examined the case for partial declaration of the powers, privileges and immunities of the Commonwealth Houses as authorised by section 49 of the Constitution, it thoroughly considered the question of transferring Parliament's penal jurisdiction to the courts in the wake of criticism of *Fitzpatrick and Browne*, but recommended against such a transfer. However, the committee concluded that the absence of provision for review of the imposition of a penalty of imprisonment was unjust and should not continue:

> We think that some power – although of a limited nature – to review Parliament's actions is needed. In our opinion the best answer lies in requiring that the ground of commitment be stated in the resolution for commitment and in the warrant that is to be issued pursuant to that resolution and that it should be open to the [court] to examine the question of whether the ground stated in the warrant is capable of amounting to a breach of privilege or other contempt.[1]

This was a role that the judgment in *Fitzpatrick and Browne* had envisaged:

> The judgment of the House is expressed by its resolution and by the warrant of the Speaker. **If the warrant specifies the ground of the commitment the court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege**, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms. ((1955) 92 CLR 157 at 162, emphasis added)

The joint select committee made a recommendation to that effect and the *Parliamentary Privileges Act 1987* therefore included section 9, as follows:

> **Resolutions and warrants for committal**
>
> 9. Where a House imposes on a person a penalty of imprisonment for an offence against that House, the resolution of the House imposing the penalty and the warrant committing the person to custody shall set out particulars of the matters determined by the House to constitute that offence.

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1 Joint Select Committee on Parliamentary Privilege, *Final Report*, October 1984, Parliamentary Paper No. 219/1984, paragraph 7.74, p.117.

The Act also included section 4 which works in conjunction with section 9 to enable a court to review whether the ground for imprisonment of a person was sufficient at law to amount to an offence as defined by section 4 of the Act:

> **Essential element of offences**
>
> 4. Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

Such a provision had not been recommended by the joint select committee but it was thought to be a useful adjunct to section 9. Together, the two provisions provided for review by the courts of any imprisonment of a person by a House. Specification of the offence in the warrant would allow a court to determine whether the ground for the imprisonment of a person was sufficient in law to amount to a contempt of a House. In other words, was the person's conduct capable of constituting an offence as defined by section 4?[2]

As neither House has imposed a penalty of imprisonment since the enactment of the Parliamentary Privileges Act, the provisions have not been tested in court. The likelihood of their being so tested is slim given the Senate's adherence to the principle that the contempt jurisdiction should be used sparingly and only for the reasonable protection of the Senate, its committees and senators against improper acts tending substantially to obstruct them in the performance of their functions.

Even if the provisions were tested, there are strict limitations on the matters that could be considered. As Enid Campbell suggests, the question for adjudication is whether a House exceeded its penal jurisdiction, not whether it was appropriate for the House to impose a penalty, whether that penalty was excessive or whether, for example, principles of procedural fairness were adhered to.[3] The limited judicial review authorised by the Parliamentary Privileges Act is not an invitation to the court to stand in the shoes of the Privileges Committee and the Senate and, in effect, "re-try" the case on its merits. Such an approach would run into the problem of Article 9 of the Bill of Rights 1688 and section 16 of the Parliamentary Privileges Act which limit the use that courts may make of proceedings in Parliament.

There are two sets of circumstances specified in section 16 where neither section 16 nor the Bill of Rights are to be taken as preventing the admission in evidence in court proceedings of the relevant parliamentary records or proceedings. The first set covers court proceedings in so far as they relate to a question arising under section 57 of the Constitution or the interpretation of an Act (subsection 16(5). The second set covers offences against the Parliamentary

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2 Parliamentary Privileges Bill 1986, Explanatory Memorandum, reproduced in Committee of Privileges, *125th Report – Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, December 2005, Parliamentary Paper No. 3/2006, pp. 88-94.

3 Enid Campbell, *Parliamentary Privilege*, The Federation Press, 2003, p. 201.

Privileges Act relating to committee proceedings (section 12, interference with witnesses, and section 13, unauthorised disclosure of evidence) or offences against an Act establishing a committee (subsection 16(7)). These provisions were enacted in recognition that it would not be possible to determine such questions or prosecute such offences without access to parliamentary records or proceedings.[4]

No such exception, however, is given for judicial review of a warrant committing a person to custody on the resolution of a House. In these circumstances, it would not be lawful for a court to stray into matters protected by section 16 of the Parliamentary Privileges Act and the Bill of Rights.

To complete these introductory remarks, it is necessary to mention that there have been occasional suggestions from High Court justices that an opportunity to revisit *Fitzpatrick and Browne* would be welcome, not only on separation of powers grounds and the characterisation of the contempt power as legislative rather than judicial, but possibly in relation to the implied freedom of political communication (although the latter suggestion arose from a mischaracterisation the case as one of defamation of a member, not intimidation of a member which it clearly was).[5] Academic commentators have also proposed grounds on which parliament's penal jurisdiction could be revisited.[6] None of these suggestions has been pursued.

In the view of Harry Evans, however, writing on the Fitzpatrick and Browne case in light of recent cases before the courts involving issues of parliamentary privilege:

> ... it may be predicted with reasonable confidence that the court, after a full argument, would uphold the fundamental finding in Fitzpatrick and Browne, that the power to punish contempts adheres to the houses under section 49 as part of the legislative rather than the judicial function.[7]

Therefore, until a house imposes a penalty of imprisonment upon a person and the person is committed to custody by a warrant containing the particulars required by section 9 of the Parliamentary Privileges Act, a court has no role in questions of contempt. It is entirely a matter for the House concerned. Even if a House does impose a penalty of imprisonment, the role of the court is limited to examining whether the ground for the imprisonment of a person – the type of conduct complained of – was sufficient in law to amount to a contempt of a House. It does not involve re-running the investigation and adjudication of the allegations.

This puts great responsibility on a House to ensure that matters of privilege are dealt with fairly, in a way that is consistent with the protection of rights in judicial proceedings, and that

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4 Parliamentary Privileges Bill 1986, Explanatory Memorandum, *op. cit.*

5 For specific references to these suggestions, see Harry Evans, 'Fitzpatrick and Browne: Imprisonment by a House', in H.P. Lee and George Winterton (eds), *Australian Constitutional Landmarks*, Cambridge University Press, 2003, p. 156.

6 Campbell, *op. cit.*, pp. 203-6.

7 Harry Evans, *op. cit.*, p. 157.

the penal jurisdiction is used only for the most serious cases where protection of the House and its members is necessary.

In the case of the Senate, and its Committee of Privileges, the relevant practices, procedures and precedents have been extensively documented to December 2005.[8] These show that the contempt jurisdiction has been used sparingly and with an emphasis on the protection of the Senate, its committees and senators against improper acts tending substantially to obstruct them in the performance of their functions. The committee has also placed a very high priority on the protection of witnesses and persons providing information to the Senate and its committees, and on the integrity of its committee processes.

In the rare cases where contempt has been found, the emphasis has always been on corrective action to restore the ability of the Senate, its committees and senators to carry out their functions, rather than on the punishment of offenders. In cases where apologies have been given or action taken by an offender to rectify the wrong, the committee has recommended that no further action be taken. These conclusions are clear from any reading of the committee's *125th Report* which, I assume, like its four previous editions, is still provided to persons involved in inquiries by the committee into allegations of contempt.

The question posed to the Australian Government Solicitor and the advice provided in response

Against this background, the question posed by the Department of Parliamentary Services to the AGS and the advice provided in response can be swiftly dealt with. Neither has any significant bearing on the task before the committee. That task is to inquire into the terms of reference agreed to by the Senate:

> In relation to the use of closed circuit television footage by officers of the Department of Parliamentary Services (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.

The terms of reference are wide and allow the committee to inquire broadly before formulating more detailed allegations in relation to any particular incidents or individuals, if the evidence obtained by the committee leads it in that direction. It is an open inquiry directed at identifying any conduct that the committee concludes might – after consideration of many factors, in the committee's judgement, on the basis of evidence obtained and taking into

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8 Committee of Privileges, *125th Report – Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, *op. cit.*.

account directions from the Senate about how it is to approach its task – constitute contempt. The process is inquisitorial, not adversarial.

The terms of reference also comprise two distinct and different issues for the committee to consider, only one of which relates to disciplinary action initiated by DPS against a person. In my advice to Senator Faulkner, published by the Finance and Public Administration Legislation Committee on 26 May 2014, I identified the protection of persons providing information to senators as a serious, though secondary focus of the advice. The provision of information to a senator may be covered by parliamentary privilege if there is a sufficiently direct connection between the provision of information to a senator and a senator's use of it in proceedings in parliament as defined by section 16 of the Parliamentary Privileges Act. I indicated that it was a separate question whether the Senate might treat as a contempt the imposition of a penalty on a person who provided information to a senator.

The principal focus of that advice was on the question of possible improper interference with the free performance by a senator of the senator's duties as a senator through inappropriate use of the CCTV system. There is no doubt that the Senate could deal with any such conduct as a contempt. It forms part of the essential element of the test of contempt in section 4 of the Parliamentary Privileges Act and is also the first of the non-exhaustive list of matters potentially constituting contempts in Privilege Resolution 6.

DPS asked AGS to advise, in the context of the committee's inquiry, "on the likely position a court would take to questions of parliamentary privilege and contempt arising out of the use of closed circuit television (CCTV) footage in a particular instance within the parliamentary precincts". Despite the breadth of the question, the AGS advice focused largely on the facts of a particular disciplinary matter and barely at all on the broader question of the use of the CCTV system as incompatible with the privileges and immunities attaching to senators and their work as senators.

As we have seen, the position a court might take on either element of the committee's terms of reference is hypothetical. Such a question has never arisen in relation to an inquiry by the committee and, in the context described above, is unlikely ever to arise. The limited circumstances in which a court might become involved in such a matter are correctly identified in footnote 1 of the advice, but there is no corresponding understanding of the limited role that a court could ever play in relation to such a matter. I have explained above the basis for that limited role.

The approach evident from the DPS question and AGS advice demonstrates a misunderstanding of the committee's role and the task set by the Senate. It puts the cart well before the horse by focusing on one particular set of circumstances and, on these alone, declaring a conclusion that sweeps away the role of the committee and the Senate in judging the occasion and manner of the exercise of its contempt jurisdiction.

I am not aware that the committee has formulated any particular allegations in respect of term of reference (b) or whether it has identified any specified person or persons (and nor would it

be appropriate for me to be so aware), but the question and advice assume it has done so and that it has also:

- reached conclusions that that particular conduct constitutes contempt;
- abandoned consideration of term of reference (a) (by its placement in the terms of reference, the primary concern of the initiators of the inquiry);
- decided to report such conclusions to the Senate;
- decided to make a recommendation that the Senate make a finding of contempt;
- decided to recommend that a penalty be imposed; and
- decided to make an unprecedented recommendation that the penalty to be imposed be a term of imprisonment.

These are the preconditions necessary for the question that has been posed – let alone the advice that has been provided – to begin to make any sense.

Naturally, and quite understandably, the advice is written to a brief provided by DPS and it therefore reflects the interests of DPS and the position DPS wishes to put to the committee. It reflects the views of DPS of its own actions, irrespective of any other evidence that might be available to the committee and disregarding the perspectives of other parties to the inquiry, let alone the role of the committee in conducting the inquiry. It is therefore of limited use to the committee.

The precincts fallacy

The advice provided by AGS focuses on a particular incident. The question posed by DPS encourages the misconception that its occurrence within the parliamentary precincts is significant.

It needs to be emphasised that there is no mystique about the parliamentary precincts. Parliamentary powers and immunities do not depend on the precincts for their operation. They operate within the jurisdiction of the Commonwealth. It is not a precondition for conduct to constitute an offence within the meaning of section 4 of the Parliamentary Privileges Act for that conduct to have occurred within the precincts. Improper interference with the free performance by a senator of his or her duties as a senator, or (in particular circumstances) with a person providing information to a senator, are potential offences regardless of whether they occur in a corridor in Parliament House, in the car park of a restaurant, on the Bourke Street tram or in cyberspace.

Likewise, the ordinary law of the land applies in the precincts. For the avoidance of any doubt on this point, the Parliamentary Privileges Act included section 15 which declares that the laws of the ACT apply in relation to the precincts or any other building in the Territory in which a House meets, subject to the powers, privileges and immunities of the Houses and any contrary statutory provision.

Despite section 15 of the Parliamentary Privileges Act, and notwithstanding section 12 of the *Parliamentary Precincts Act 1988* which specifies that nothing in that Act is to be taken as

derogating from the powers, privileges and immunities of each House and of their members and committees, the AGS advice proceeds to argue the opposite. It elevates the alleged authorisation by the Code of Practice for CCTV of the particular use of footage by DPS above the question of the compatibility of the Code with the powers, privileges and immunities of the Houses and their members. It opines that authorisation of the Code by the Presiding Officers pursuant to authority conferred by the Precincts Act is sufficient to dismiss any suggestion that an action argued to be duly authorised by the Code could reasonably be characterised (by our hypothetical court) as "an interference with parliamentary privilege or a contempt".[9]

That such an argument is, with respect, nonsense is demonstrated by actual events surrounding addresses to joint meetings of the Houses on successive days in 2003 by US President George W Bush and President of the People's Republic of China, Hu Jintao, questions arising in relation to which were the subject of the committee's *118th Report*.[10] After the purported suspension by the Speaker of Senators Brown and Nettle from a meeting of the Senate on 23 October and from the meeting of the Senate the following day, the Presiding Officers issued to parliamentary security staff employed by the former Joint House Department a directive, under their authority to control and manage the precincts, that the two senators were not to be permitted to enter the House of Representatives chamber and that, if necessary, "preventative force" should be used. The then Clerk of the Senate issued an instruction to Senate staff on duty that day that they should not physically restrain any senator.[11] Physical restraint or "preventative force" to prevent a senator attending a meeting of the Senate would clearly have been an improper interference with the ability of a senator to carry out his or her functions as a senator and therefore, potentially, a contempt. This is an example where legitimate control and management of the precincts was in conflict with the rights of senators as senators, possibly because of the inadequacy of advice received by the Presiding Officers on that occasion.

However, such an argument is necessary to underpin the subsequent argument by AGS that the actions of DPS employees were authorised by paragraph 5(a) of the Code and could also be found to be consistent (by our hypothetical court) with paragraphs 5(b) to (e) of the Code. Once it is acknowledged that such justifications cannot, as a matter of law, support the application and operation of the Code in a manner that derogates from the powers, privileges and immunities of each House and of their members and committees, such arguments must fail.

The fact that an activity may be duly authorised under a power conferred by the Precincts Act is no guarantee that the same activity may not also be in conflict, potential or actual, with the powers, privileges and immunities of each House and of their members and committees. In this context, I note that in my advice to Senator Faulkner, I observed that the Code in its key principles refers to the privacy and civil liberties of senators, members and other building

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9 AGS Advice, paragraph 62 and n13,p. 14.

10 Committee of Privileges, *118th Report – Joint meetings of the Senate and House of Representatives on 23 and 24 October 2003*, April 2004, Parliamentary Paper No. 80/2004.

11 *ibid.*, p. 5.

occupants, but it fails to acknowledge the unique characteristics of a parliament, the law of parliamentary privilege or any relevant resolutions of the Houses. In this sense, the Code as it stands is arguably unfit for purpose. If the primacy of the powers, privileges and immunities of the Houses is not understood by the administrators of the Code, there is also a need for education.

Conclusion

While I take issue with many details of the advice, I have focused only on the main points.

My overall assessment is that the advice is an attempt to answer a question that will almost certainly never arise. It misunderstands the respective roles of the Parliament and the courts in matters of privilege, and postulates how a court might view matters that are most unlikely ever to arise in judicial review of a warrant of committal for imprisonment.

The advice provides DPS with a justification for its actions. While I have no criticism of it on that basis, or of DPS for seeking such a justification, the justification takes no other evidence or point of view into account and is based on a distorted and incorrect view of the relationship between actions taken under the Precincts Act and the powers, privileges and immunities of the Houses, their committees and members. The advice largely ignores the issue of possible improper interference with the free performance by any senator of their duties, and the compatibility of the CCTV system with the privileges and immunities attaching to senators and their work as senators. It over-emphasises possible justifications for the actions of DPS on one aspect of the terms of reference at the expense of a proper consideration of the powers, privileges and immunities of the Houses and their members.

The latter is a primary consideration for any officer or employee of the parliamentary service. An understanding of the powers, privileges and immunities of the Houses and their members should underpin any policy that is formulated or any administrative action that is taken by a parliamentary department and its staff.

(Rosemary Laing)

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

DPS ref: 14/2295

RECEIVED
11 NOV 2014
Committee of Privileges

Senator the Hon Jacinta Collins
Chair
Senate Standing Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Senator Collins

I refer to your letter of 27 October 2014, seeking copies of records of particular matters arising out of the Department's submission dated 26 September 2014.

Dealing with the Committee's request in order, I note:

- the request from HR Services for approval to view CCTV footage was made verbally, as was noted on page 3 of Attachment B to DPS' submission dated 26 September 2014. There is no written record of the request.
- the brief recommending a preliminary investigation is at **Attachment A** to this letter.
- there is no separate approval for a 'continuing search' – this continued search was part of a single approval given on 25 February 2014, undertaken as the full detail of Employee X's visit to APH had not been discovered at the time the Secretary was briefed about a preliminary investigation. The initial report from the security officer to HR Services 'communicating the discovery of the additional footage' was done verbally, although is referred to in the email chain at **Attachment B** to this letter;
- the discovery of additional footage was communicated to the Secretary by email, and the Secretary's direction about use of the footage was also given by email. The email chain is at **Attachment B** to this letter;
- a copy of the brief to the Secretary recommending a formal Code of Conduct investigation is at **Attachment C** to this letter;
- a copy of the appointment of the investigator is at **Attachment D** to this letter.

In relation to the KPMG audit of compliance with the CCTV Code of Practice, this audit is yet to be completed, however a copy will be provided to the Committee as soon as it has been submitted to DPS' Audit Committee and the Security Management Board.

Yours sincerely

Carol Mills
Secretary
11 · 11 · 14

14/164

RECEIVED

Department of Parliamentary Services

Corporate Services Branch

Ref no: 12/7273

Issue: Request for a preliminary investigation into whether may have a case to answer under the Department of Parliamentary Services (DPS) Code of Conduct.

Background

has been temporarily reassigned duties and has been placed with until 28 February 2014. On 3 March 2014 is due to return to her nominal position of a . On Wednesday 19 February the received a typed note that had been left for her in a plastic tray affixed to the wall outside her office. The wording of the note was clearly designed to cause distress. A copy of the note is attached (Attachment A).

Current Position

On 20 February it was established that 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 entering through the Senate security area with several pieces of paper in her hand. There are a number of camera views that show that proceeded to the area outside the entrance to Hansard and then leaving the vicinity of Hansard via the lift and then the first floor. was in Parliament House for a period of 9 minutes in total and did not enter her current work area ( ). 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.

Recommendation

It is recommended that you:

a). approve a preliminary investigation into whether may have a case to answer under the DPS Code of Conduct in relation to the note left for and addressed to

b). approve the gathering of evidence relating to movements within Parliament House on the evening of 18 February 2014

c). approve the release of information from Security Support such as entry and exit times for and also the release of still photographs from security cameras that depict movements within Parliament House between 9.31 PM and 9.40 PM on 18 February 2014.

21/2/14

Contact Officer
Luci Henson
Director HR Services

Mary-Ellen Sweeney
Assistant Secretary
Corporate Services 21/2/2014

Carol Mills
Secretary

February 2014

Finally 'left' is meeting 'right' in Hansard and there is united agreement that there is little if any trust or respect for you. It is doubtful that you can recover, but you should at the very least give 'strong but fair' a try. Presently you are neither. Perhaps if this is brought to your attention, you may decide to have a good look in the mirror. If you do not like what you see, and you should not, you can then address the 'blemishes'.

Weston, Wendy (DPS)

From: Mills, Carol (DPS)
Sent: Thursday, 27 February 2014 1:19 PM
To: (DPS)
Cc: (DPS)
Subject: Re: CONFIDENTIAL - Additional Issue

Sensitivity: Confidential

Of yes I well understand how it occurred.
C

Carol Mills
Secretary
Department of Parliamentary Services

W: 61 2 6277 7100
M: 61 412 963 775

On 27 Feb 2014, at 13:17, ' (DPS)" < > wrote:

> Hi Carol
>
> Thank you for your email. Please be assured that we were not monitoring DPS employees visiting any particular parliamentarian.
>
> As part of our preliminary investigation into another matter regarding the anonymous letter provided to , her movements in and out of the building were examined and this other bit of footage came to light.
>
> Regards

From: Mills, Carol (DPS)
Sent: Thursday, 27 February 2014 1:02 PM
To: (DPS)
Cc: (DPS)
Subject: Re: CONFIDENTIAL - Additional Issue
Sensitivity: Confidential

Hi

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. Happy to discuss.

C

Carol Mills
Secretary
Department of Parliamentary Services

W: 61 2 6277 7100
M: 61 412 963 775

On 27 Feb 2014, at 9:21, ' (DPS)" < > wrote:

Dear Carol

Through investigating additional footage of movements, DPS footage has also shown that deposited a brown envelope under the door of Senator Faulkner's office before our Senate Estimates Hearing. It is also noted that Senator Faulkner is now in opposition which does question whether the Parliamentary Service Value of 'Impartial' has been breached in this case.

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 (according to my conversation with)
– 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.

It may also be timely for this matter to be discussed with the Parliamentary Service Commissioner to determine whether some form of advice or Direction may need to be issued to clearly educate our staff on whether this behaviour could be a breach of the PS Code of Conduct.

Regards

From: (DPS)
Sent: Thursday, 27 February 2014 8:19 AM
To: (DPS)
Subject: CONFIDENTIAL - Additional Issue
Sensitivity: Confidential

Hi , please find attached a copy of my letter to asking her to provide further information in relation to the reasons for her entering Parliament House at 9.31 PM on Tuesday 18th February + additional details regarding her movements within the building etc.

After sending this letter (at 4.13 PM yesterday) I was advised by , via (at 4.55 PM yesterday) that there was also security camera vision of , depositing a "brown envelope" at the office of Senator John Faulkner. Given that Senator Faulkner is now in opposition I question what legitimate reasons there could be for depositing a "brown envelope" at his office at that time of night and also recall Senator Faulkner's keen interest in matters pertaining to Hansard in Senate Estimates earlier this week. As you know, this addition matter is outside the scope of what the Secretary has asked me to investigate and you may therefore like to raise the issue with her.

At this stage I have not seen the security camera footage however without wishing to pre-empt what (if any) further action may be contemplated I will ask to isolate the relevant footage and prepare some still shots as it does relate to visit to Parliament House on the night of 18th February and I have already asked her to detail her movements within the building.

For you information and action as appropriate.

From: (DPS)
Sent: Wednesday, 26 February 2014 4:13 PM
To:
Subject: Request For Information

Please find attached a request for information relating to your access to Parliament House between 9.31 PM and 9.40 PM on Tuesday 18th February. As outlined in the attached letter, a response from you is requested by the close of business on Friday 28th February.

Please do not hesitate to contact me direct should you require any further information or clarification.

Regards,

'.pdf>

Department of Parliamentary Services

Corporate Services Branch

Ref no: 13/7273

Issue: Request for an investigation into whether a DPS employee, , has breached the Parliamentary Services Code.

Background

On Wednesday 19 February the , received a typed note that had been left for her in a plastic tray affixed to the wall outside her office. The wording of the note was clearly designed to cause distress. A copy of the note is attached (Attachment A).

On 20 February it was established that 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 entering through the Senate security area with several pieces of paper in her hand. There are a number of camera views that show that proceeded to the area outside the entrance to Hansard and then leaving the vicinity of Hansard via the lift and then the first floor. was in Parliament House for a period of 9 minutes in total and did not enter her current work area ( ). 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.

On 25 February you approved a preliminary investigation in order to assess whether may have a case to answer under the Code of Conduct.

Current Position

On 26 February was asked to provide information (Attachment B) regarding her reasons for being in Parliament House and to detail:-

- What papers she was carrying when entering the building
- Where these papers were left
- Her precise movements within the building

In response to the above questions has advised that she attended Parliament House in order to drop off some work related documents on her way back home after visiting her son in hospital (Deakin). states that she was unable to remember the password to the door of her workplace ( ) and so was unable to enter her normal workplace.

full response is attached (Attachment C).

provides no further information regarding her movements in the building or where the papers or documents were left as was requested. It should also be noted that at no stage went near (her workplace until 28 February) and that the closest that she got to that location was when exiting the lift on the first floor when she turned to her left. The security camera that provides a view of the corridor leading to shows that did not enter that corridor. There are therefore a number of remaining issues that require clarification and the questions that need to be put to are more appropriate for a formal investigative process rather than a preliminary.

In addition to the questions originally put to 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 did not enter the building with the envelope nor obtain the envelope from 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 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 (Attachments D through I).

Please note that the quality of the still photographs is of lower quality than the video footage actually available.

The route taken by on the evening of 18 February is at Attachment J.

Recommendations
It is recommended that you:

1). approve a code of conduct investigation into whether 'on the balance of probabilities' has breached the Parliamentary Service Code of Conduct by leaving the note addressed to (Attachment A) in the plastic tray outside office.

2). approve the appointment of to investigate the matter

3). approve the appointment of as the sanction delegate should a breach be determined.

Contact Officer
Luci Hanson
Director HR Services

Jenny Wilson
Chief Operating Officer A/g
7.3.2014

Carol Mills
Secretary

12 March 2014

Recommendation 1 Approved Not Approved

Recommendation 2 Approved Not Approved

Recommendation 3 Approved Not Approved

Finally 'left' is meeting 'right' in Hansard and there is united agreement that there is little if any trust or respect for you. It is doubtful that you can recover, but you should at the very least give 'strong but fair' a try. Presently you are neither. Perhaps if this is brought to your attention, you may decide to have a good look in the mirror. If you do not like what you see, and you should not, you can then address the 'blemishes'.

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

26 February 2014

Request for Information

My purpose in writing to you is to advise that I have been asked by the Secretary to conduct a preliminary investigation into the circumstances surrounding a document that was left for in a plastic tray outside her office office is located in the Hansard section on the ground floor of the Senate wing. The document was discovered by on the morning of Wednesday 19th February. The contents of the document caused considerable distress and the author may therefore be in breach of the Parliamentary Service Code of Conduct in terms of failing to treat with courtesy and respect and without harassment.

In order to establish who may have left the document for and identify possible witnesses, access details to Parliament House for a number of DPS staff were examined for both Tuesday 18th February and Wednesday 19th February. As a result it has been established that you entered Parliament House at 9.31 PM and exited Parliament House at 9.40 PM on Tuesday 18th February. Security camera footage also shows that you entered Parliament House through the Senate wing entrance and had with you several pieces of paper which were placed in a tray at the security screening point.

Examination of additional footage from a number of security cameras also shows the route taken by you in proceeding from the security screening point until you exited the building 9 minutes later. When exiting the building you do not appear to have the pieces of paper that were identified when you first entered the building at 9.31 PM. It has also been established that you did not enter the area occupied by the team which is your current work location but did enter and exit the lifts on the ground and first floors adjacent to where the Hansard section is located.

Can you please advise me as to the reason/s why you entered Parliament House at 9.31 PM on Tuesday 18th February, what papers you were carrying, where these

papers were left and your precise movements whilst in the building. Could you please respond to me by the close of business on Friday 28th February.

Yours Sincerely

(DPS)

From:
Sent: Thursday, 27 February 2014 11:02 AM
To: (DPS)
Subject: RE: Request For Information

Dear
Yes, I can confirm I accessed Parliament House on Tuesday, 18 February. My son had surgery that day at the Equinox hospital in Deakin. I was at work on Tuesday and came back here in the evening to drop off some work related documents that I had taken to the hospital to read while my son slept. As I was going to be home on carer's leave the next day (Wednesday, 19 February) I brought them back here on my way home from the hospital. Unfortunately I couldn't remember the password to door (as I don't use it often) so I didn't come in here.

I'm sorry to hear of distress. A common ground that and I have always shared is the difficulties around some of the staff management issues in Hansard, and I know it can be a very harsh environment. The shared ground hasn't changed from my perspective. Any other issues are being managed either externally or by HR Services.

Regards

From: (DPS)
Sent: Wednesday, 26 February 2014 4:13 PM
To:
Subject: Request For Information

Please find attached a request for information relating to your access to Parliament House between 9.31 PM and 9.40 PM on Tuesday 18th February. As outlined in the attached letter, a response from you is requested by the close of business on Friday 28th February.

Please do not hesitate to contact me direct should you require any further information or clarification.

Regards,

PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

DPS ref: 14/1067

Dear

Investigation into a possible breach of the Parliamentary Service Code of Conduct

The purpose of this letter is to appoint you as an investigating officer to determine whether a Department of Parliamentary Services (DPS) employee, has breached the Parliamentary Service Code of Conduct.

Background

Allegations against were referred to Ms Carol Mills, Secretary, DPS, concerning a suspected breach of section 13(3) of the Parliamentary Service Code of Conduct. A complaint has been received from about a typed note left for her in a plastic tray affixed to the wall outside her office during the evening of 18 February 2014 or prior to commencement of business on 19 February 2014. It is alleged that was captured on internal security vision entering the building during the evening of 18 February 2014 and was tracked to the vicinity of Hansard.

The *Governance Paper No. 4.1 – Procedures – Procedures for investigating and determining breaches of the Code of Conduct* (the Procedures) set out the Procedures for determining whether a Parliamentary Service employee in DPS has breached the Code of Conduct (Attachment A).

Consistent with paragraph 3.1 of the procedures, the Secretary considered the suspected breach of the Code of Conduct should be investigated. The Secretary has referred the matter to me for action and, in doing so, has delegated her power under paragraph 6 of the Procedures to me.

Appointment as investigating officer

I appoint you under paragraph 3.1 of the Procedures, as an investigating officer to:

- determine whether has breached the Code of Conduct; and
- if so, to recommend an appropriate sanction (if any).

Terms of reference

As the nominated investigating officer, you are to:

- issue a notice of investigation setting out the suspected breaches to the employee;
- undertake an investigation into the suspected breach of the Code of Conduct in accordance with the Procedures; and

- provide me with a written investigation report setting out:
  - details of the steps taken in the investigation process;
  - your consideration in relation to whether breached the Code of Conduct;
  - if you conclude that there has been a breach of the Code of Conduct, your recommendation on what, if any, sanction should be imposed; and
  - copies of any written statement(s) received from and a record of any oral statements made by in relation to the suspected breach of the Code of Conduct, your findings or any proposed sanction.

Consistent with the Procedures, you must:

- carry out the investigation process with as little formality and as much expedition as a proper consideration of the matter allows; and
- have due regard to procedural fairness.

My role as delegate

Once I receive your report, consistent with paragraph 6.4 of the Procedures, I will consider your report and, if appropriate, make recommendations to the Secretary or her delegate on any sanction(s) or other action recommended in the report.

Yours sincerely

Carol Mills
Secretary
19 March 2014